

(16,629.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 136.

ADOLPH COHN, APPELLANT,

vs.

ANGELINA DAILY AND A. J. MEHAN.

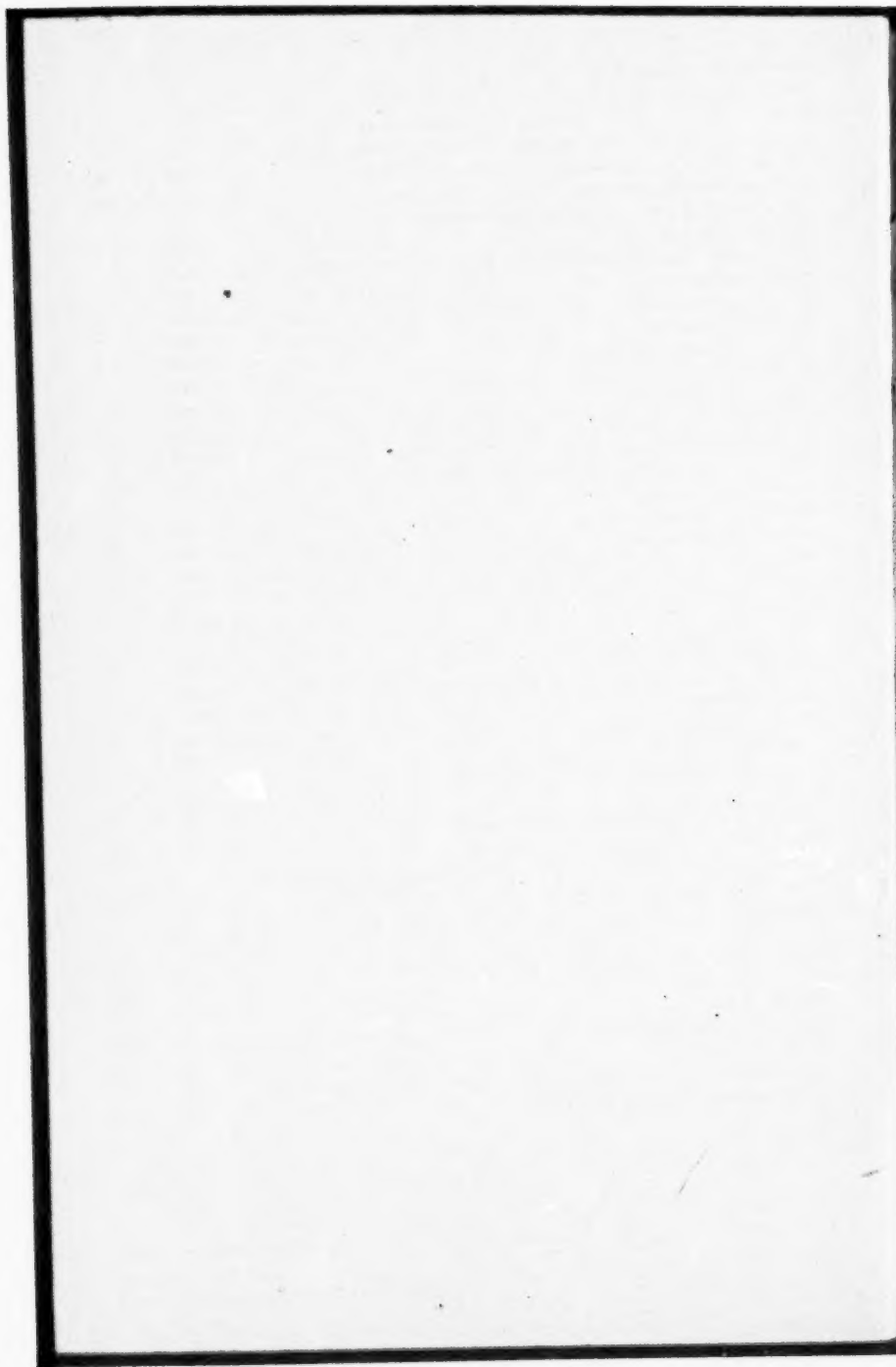
APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF
ARIZONA.

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a UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

I, J. L. B. Alexander, clerk of the supreme court of the Territory of Arizona, do hereby certify that the following pages, numbered from 1 to 243, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the cause of Adolph Cohn, appellant, against A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, C. F. Fisher, and Angela Dias de Daley, appellees, as the same remains of record and on file in said office; and I further certify that no opinion has been rendered or filed in said cause in said office, and that the citation issued in said cause and lodged in said office has been lost, as shown in the affidavit of myself, appended hereto, and that the order for the enlargement of the time within which said citation was made returnable, annexed hereto, is the original thereof.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Phoenix, the capital of Arizona Territory, this 28th day of June, A. D. 1897.
J. L. B. ALEXANDER, Clerk.

b In the Supreme Court, Territory of Arizona.

ADOLPH COHN, Pl't'ff and Appel't,
vs.
A. J. MEHAN ET AL., Def'ts and Appellee- } No. 390.

Barnes & Martin, att'ys for pl't'f & appel't.

Transcript on appeal.

Filed Oct. 2, 1893.

T. D. HAMMOND, Clerk.

1 TERRITORY OF ARIZONA, }
County of Cochise. }

At a term of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise, begun and holden at Tombstone, within said county of Cochise, before the Honorable Richard E. Sloan, and ending on the — day of —, 189—, the following case came on for trial, to wit:

ADOLPH COHN, Plaintiff,
vs.
A. J. MEHAN, DEWITT C. TURNER, BELL H. CHANDLER, F. C. Fisher, and Angela Dias de Daley, Defendants. }

And the following papers were filed with the clerk of said court on the dates hereinafter set forth, and certain proceedings were had and entered of record as hereinafter appears, viz:

- 2 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLPH COHN, Plaintiff,

vs.

A. J. MEHAN, DEWITT C. TURNER, BELL H. CHANDLER, F. C. FISHER, and Angela Dias de Daley, Defendants. } Complaint.

The plaintiff complains and alleges:

1st.

That the plaintiff is a resident of the county of Cochise, Territory of Arizona; that the defendants A. J. Mehan, Dewitt C. Turner, and Bell H. Chandler are residents of Pueblo, State of Colorado; F. C. Fisher, a resident of Denver, State of Colorado; and Angela Dias de Daley is a resident of Cochise county, Territory of Arizona.

2nd.

That he is now and for a long time hitherto has been the owner and entitled to the possession of those certain lots, pieces, or parcels of land known as mining claims in Warren mining district, in the county of Cochise, Territory of Arizona, named and located
3 and of record in the recorder's office of said county of Cochise, reference being hereby thereto made for particular description as follows, to wit:

The "George Washington" mining claim, 600 feet by 1,500 feet, situate $\frac{3}{4}$ of a mile east of the town of Bisbee, recorded in Book 11, page 255, record of locations of mines; also the "Old Republican" mining claim, 600 feet by 1,500 feet, situate about one mile east of the town of Bisbee, in Mule pass, and running parallel with the "George Washington" mining claim, recorded in Book 9, page 84, record of location of mines; also the "Copper Frying Pan" mining claim, 200 feet by 1,500 feet, joins the "Sacramento" mining claim on the north side line and joins the south line of the "Cleaveland" mining claim, and on the east by the "Stars and Stripe" mining claim and parallel of the north side of the "Vet-ran" mining claim, and running parallel of the south side line of the "Angel" mining claim and about $\frac{3}{4}$ of a mile east of Bisbee, in Mule pass, recorded in Book 11, page 628, of records of locations of mines; also the "Irish Mag" mining claim, 600 feet by 1,500 feet, situate about one-half mile from Copper Queen smelter, in a southeasterly direction, and running parallel with the "Keystone" mining claim, recorded in Book 11, page 104, record of location of mines; also the "Old Canteen" mining claim, 600 feet by 1,500 feet, situate about $1\frac{1}{2}$ miles east of the town of Bisbee, recorded in Book 9, page 89, record of location of mines, and bounded on the north by the

- 4 "Cumberland" mining claim, on the west by the "Little New York" mining claim, and on the south by the "Virginia" mining claim, 600 feet by 410 feet, being a relocation of the

"Gold Bear" mining claim, the owners having failed to perform the assessment work for the year 1887, said claim running parallel with the "Keystone" mining claim, and joins the "Silver Spray" mining claim, and is about $\frac{1}{4}$ of a mile from the "Holbrook" mining claim, recorded in Book 11, page 555, record of locations of mines; also the "Intervenor" mining claim, 600 feet by 1,500 feet, situate about $1\frac{1}{2}$ miles east of the town of Bisbee, in Mule gulch, and joins the "Erie Cattle Company" mining claim, on the *its* west end, recorded in Book 11, page 613, record of locations of mines; also the "Angel" mining claim, 300 feet by 800 feet, situate about $\frac{1}{2}$ mile east of the town of Bisbee, recorded in Book 11, page 225, record of location of mines; also the "Diadem" mining claim, 600 feet by 1,500 feet, situate about $1\frac{1}{2}$ miles east of the town of Bisbee, in Mule gulch, and joins the "Erie Cattle Company" mining claim on its south side.

3rd.

That the said plaintiff is the owner of the interest in and to said premises, to wit, the entire interest in the five following mining claims, viz., the "George Washington" mining claim; also the "Old Republican" mining claim; also the "Copper Frying Pan" mining claim; also the "Angel" mining claim; an undivided one-half interest in the "Irish Mag" mining claim; an undivided
 5 one-third interest in the four following mining claims, viz., the "Copper Monarch" mining claim; also the "Intervenor" mining claim; also the "Old Canteen" mining claim, and in the "Diadem" mining claim, and that the said defendants claim an estate or interest therein adverse to the said plaintiff.

4th.

That the claims of the said defendants are without any right whatever, and that the said defendants, or either of them, have no estate, right, title, or interest whatever in said premises or several mining claims or any part thereof.

Sec. 5th.

Plaintiff further says that on and before September 13th, 1890, the defendant A. J. Mehan was the owner of the interests in the above-mentioned mining claims now owned by plaintiff; that at said date said Mehan — indebted to plaintiff in the sum of \$299.00; that at said time plaintiff brought suit in the justice court of precinct No. 1, in said county of Cochise, against said Mehan by filing written evidence of the indebtedness and causing summons to issue thereon, which summons was personally served on said Mehan in said county, and said defendant, Mehan, appeared in said cause in said court and made defence to said action by a general denial; said justice court had jurisdiction of the person and the subject of the
 6 action; that on filing said suit this plaintiff caused a writ of attachment to issue out of said court by first filing the affidavit and undertaking required by law, and caused such

writ to be duly levied as required by law, and duly filed the same in the recorder's office of said county; that afterwards, to wit, on Sept. 29th of the same year, the same being the day set for the trial of said cause, plaintiff obtained a judgment in said cause against defendant Mehan for the said sum and the costs of the action; the said Mehan failing to pay said judgment or any part thereof, the plaintiff caused an execution to issue thereon from said court in due manner required by law, which said writ was duly levied and a sale thereunder in the manner and time in such cases provided by law, at which said sale this plaintiff became the purchaser of the property herein sued for. Said sale occurred on October 27th, 1890, and this plaintiff obtained from the officer selling a certificate of sale. Said Mehan failed to redeem said property or any part thereof from the said sale until the time of redemption had expired, after which said time the plaintiff received from the officer who sold said property under said judgment (the same being a duly qualified and acting constable in said county and precinct) a deed duly executed as by law required, which said deed is of record in the recorder's office of Cochise county, Arizona, Book of Deeds R. E. No. —, p.—, conveying to plaintiff all the interest of said Mehan in said properties.

7 Wherefore the plaintiff prays:

1st.

That the defendants may be required to set forth the nature of their several claims, and that all adverse claims of the defendants may be determined by a decree of this court.

2nd.

That by said decree it be declared and adjudged that the defendants or either of them have no estate or interest whatever in or to said premises or mining claims, and that plaintiff is the owner and entitled to the possession and his title good and valid.

3rd.

That the defendants be forever enjoined and be barred from asserting any claim whatever in or to said premises or mining claims adverse to the plaintiff, and for such other relief as to this honorable court shall seem meet and agreeable to equity, and for his costs of suit.

M. A. SMITH AND
W. C. STAEHLE,
Plaintiff's Attorney.

(Endorsed :) No. 1614. Title of court and cause. Complaint.
Filed Sept. 4th, 1891. A. H. Emanuel, clerk.

8

Title of Court and Cause.

Answer of Angela Dias.

Now comes Angela Dias, sued in the above-entitled action under the name — Angela Dias de Daley, and for herself alone answers plaintiff's complaint herein as follows:

1st.

Demurs to said complaint on the ground that the same does not state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendant.

2nd.

And defendant, answering said complaint, denies that plaintiff is the owner of the mining claims described in said complaint or the owner of any of said mining claims or of any part or interest in said mining claims or any of them.

Wherefore this defendant prays judgment against plaintiff; that plaintiff take nothing by his suit, and that defendant recover her costs in this action.

JAMES REILLY,
Attorney for Angela Dias.

Endorsed: No. 1614. Title of court and cause. Answer of Angela Dias. Filed Sept. 17th, 1891. A. H. Emanuel, clerk, by W. D. Monmonier, deputy.

9

Title of Court and Cause.

Amended Answer.

Now comes Angela Dias, sued in this action by the name of Angela Dias de Daley, and after service thereof files this her amended answer to plaintiff's complaint as follows:

1st.

Defendant demurs to said complaint that said complaint does not state facts sufficient to constitute a cause of action.

2nd.

That said complaint is ambiguous and uncertain in this: In paragraphs two and three thereof it avers that plaintiff is the owner of the property described therein, and thereafter in paragraph five of said complaint an attempt is made to derain title, which attempted derainment shows no title in plaintiff.

2nd.

And defendant, answering said complaint, denies each and every allegation therein contained, except the first paragraph thereof,

setting out the residences of the several parties to this action, and in particular denies that plaintiff is or ever was the owner of the mining claims described in said complaint or of any of them
 10 or of any interest in them or any of them, and denies that on the 13th day of Sept., 1890, or at any time the defendant A. J. Mehan was the owner of said mining claims or interests in mining claims or owned any interests in said mining claims or interests in mining claims or any of them.

3rd.

And for a further cause of answer, defence, counter-claim, cross-complaint, and affirmative relief against said plaintiff and the other defendants in this action, this defendant avers:

That the plaintiff and this defendant are residents of the county of Cochise, Territory of Arizona, and the defendants A. J. Mehan, Dewitt C. Turner, and Bell H. Chandler are residents of Pueblo, State of Colorado, and the defendant F. C. Fisher is a resident of Denver, State of Colorado.

That on the 11th day of April, 1890, and for more than five years prior thereto one James Daley and this defendant were husband and wife respectively and lived and cohabited together in Bisbee, county of Cochise aforesaid; that at the time of the marriage of said Daley and this defendant the said Daley owned no money or property of any kind and did not earn or acquire any money or property of any kind during the continuance of said marriage, and at the time of said marriage this defendant had three thousand
 11 dollars in United States coin and currency in her own right; that during the continuance of said marriage and prior to the aforesaid 11th day of April, 1890, the said James Daley and this defendant used all the said sum of three thousand dollars in prospecting for, locating, and procuring, preserving, and maintaining title to mines and mining claims and interests in mining claims in Warren mining district, county of Cochise aforesaid, and on the said 11th day of April, 1890, this defendant owned the following-described mining claims and interests in mining claims situate in said Warren mining district, to wit: The "George Washington," located January 1st, 1887, recorded in Book 11, Record of Location of Mines, page 225.

The "Old Republican," located December 15th, 1888, recorded in Book 9, Record of Location of Mines, page- 84 and 85.

The "Copper Frying Pan," located January 22nd, 1889, recorded in Book 11, Records of Location of Mines, page 628.

The "Angel," located January 1st, 1887, recorded in Book 11, Record of Location of Mines, page 225.

An undivided half interest in and to the "Irish Mag," located January 1st, 1886, recorded in Book 11, Records of Locations of Mines, page 104; and an undivided one-third ($\frac{1}{3}$) interest in and to each of the following-named mining claims:

The "Copper Monarch," located July 28th, 1888, recorded in Book 11, Records of Locations of Mines, page 555.

12 The "Old Canteen," located January 1st, 1889, recorded in Book 9, Records of Location of Mines, pages 89 and 90.

The "Intervenor," located December the 24th, 1888, recorded in Book 11, Records of Locations of Mines, page 613.

The "Diadem," located January 24th, 1888, recorded in Book 11, Records of Locations of Mines, page 613; all of which records of locations are in the office of the county recorder of the aforesaid county of Cochise, and said records of locations are hereby specially referred to for a more particular description of said mining claims, and said mining claims are the same as described in plaintiff's complaint.

That during all of the time of said coverture this defendant was uneducated and utterly ignorant of the language, laws, and customs of the United States of America and of this Territory, and the said James Daley was fairly well versed in the said language, laws, and customs, and this defendant, confiding and relying on the advice and direction of her said husband, advanced her said money to procure, preserve, and maintain the title to said mining claims and interests in mining claims on the direction and advice and at the request of her said husband, who took advantage of defendant's said ignorance and of the confidence reposed in him by her and took and kept the title to all said mining claims and interests in mining claims

13 in his own name without the knowledge or consent of this defendant.

That on the aforesaid 11th day of April, 1890, all of this defendant's solid money, three thousand dollars, was invested in the mining claims and interests in mining claims hereinbefore described, and on that day the said James Daley left this defendant in the county aforesaid with the intention of abandoning her, and has not since returned to nor in any way communicated with this defendant.

That thereafter on the 2nd day of September, 1890, the said James Daley conveyed all said mining claims and interests in mining claims by deed duly acknowledged and recorded in the office of the county recorder of the aforesaid county of Cochise, in Book 11 of Record of Deeds of Mines, at page 226, to the defendant A. J. Mehan, who gave no value whatever therefore, and who, at the time of said conveyance and prior thereto, had full notice and knowledge of all the equities of this defendant as hereinbefore set out.

That the plaintiff, Adolph Cohn, claims to own all said mining claims and interests in mining claims by virtue of an attachment, judgment, execution sale thereunder, and constable's deed in the case "Adolph Cohn vs. A. J. Mehan," in justice court of precinct No. one of this county, which deed was duly acknowledged and recorded in the office of the county recorder of said county of Cochise, in Book 11 of Deeds of Mines, at page 291.

14 That said Adolph Cohn was the plaintiff in that action and the purchaser at said execution sale and gave no value for said purchase, and at the time of said purchase and long prior thereto had full notice and knowledge of all the equities of this defendant, as hereinbefore set out, and also had notice and knowledge that the said A. J. Mehan gave no value for his aforesaid conveyance of

September 2nd, 1890, and that said Mehan at and prior to taking his said conveyance had notice and knowledge of all the equities of this defendants, as hereinbefore set out; that on the 15th day of September, 1890, the said A. J. Mehan conveyed an undivided one-half interest in and to all said mining claims and interests in mining claims by deed duly acknowledged and recorded in the office of the county recorder of the aforesaid county of Cochise, in Book 11 of Deeds of Mines, at page 228, to the defendant Dewitt C. Turner, who have no value for said conveyance, and who, at and long prior to the time of taking the same, had notice and knowledge of all the equities of this defendant, as hereinbefore set out, and had notice and knowledge that his said grantor, A. J. Mehan, gave no value for his aforesaid conveyance of September 2nd, 1890, and that said A. J. Mehan at and prior to taking his said conveyance had notice and knowledge of all this defendant's equities, as hereinbefore set out.

15 That thereafter, on the 22nd day of November, 1890, the said A. J. Mehan conveyed an undivided one-third interest in and to all said mining claims and interests in mining claims by deed duly acknowledged and recorded in the office of the county recorder of the aforesaid county of Cochise, in Book 11 of Deeds of Mines, at page 240, to the defendant Bell H. Chandler, and thereafter, on the 8th day of January, 1891, the defendant Dewitt C. Turner conveyed an undivided one-sixth interest in and to the said mining claims and interests in mining claims to the defendant F. C. Fisher by deed duly acknowledged and recorded in the office of the county recorder of the county of Cochise, in Book 11 of Deeds of Mines, at page 273; that said defendants, Bell H. Chandler and F. C. Fisher, did not nor did either of them pay any value whatever for this said deeds or either of them, and the said defendants, Chandler and Fisher, at and prior to the time of taking their said deeds respectively each had full notice and knowledge of this defendant's equities, as hereinbefore set out, and had notice and knowledge that their grantors gave no value for their said deeds or either of them, and that both said Mehan and Turner, before taking their deeds, had notice and knowledge of this defendant's equities as herein set out; that on the 15th day of October, 1890, this defendant commenced an action in this court to obtain a decree

16 of divorce from the bonds of matrimony theretofore and then existing between this defendant and the said James Daley, and also to obtain a decree awarding her all the property in plaintiff's complaint and hereinbefore described and permitting this defendant to resume her former name, "Angela Dias," which action is entitled Angela Dias de Daley vs. James Daley, No. 1534: that hereafter such proceedings were had in that action that on the 14th day of May, 1891, this court duly gave and made a judgment and decree therein in favor of this defendant (plaintiff in that action) and against the said James Daley, dissolving the bonds of matrimony theretofore existing between the said Daley and this defendant and awarding to her all the property here-

inbefore described and permitting her to resume her former name, "Angela Dias."

Wherefore this defendant prays a judgment and decree of this court: 1st. That this defendant is the owner of all the mining claims and interests in mining claims in plaintiff's complaint and hereinbefore set out and described.

2nd. That the plaintiff has no right, title, or interest in or to said mining claims or interests in mining claims or any of them.

3rd. That the defendants A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, and F. C. Fisher have not nor has either or any of them any right, title, or interest in or to said mining claims or interests in mining claims or any of them.

4th. That the constable's deed to plaintiff and the deed of 17 James Daley to defendant Mehan and of defendant Mehan to defendants Turner and Chandler and the deed of said Turner to defendant Fisher as hereinbefore described, be and that each of them be cancelled of record and for nought held, and that this defendant's title to all said property be quieted, and that said decree be in favor of this defendant by her proper name, "Angela Dias."

5th. And for such other and judgment and decree as may appear equitable, and for costs of this action.

JAMES RIELLY,

Attorney for Defendant Angela Dias.

Endorsed: No. 1614. Title of court and cause. Amended answer. Service accepted Nov. 9th, 1891. M. A. Smith. Filed November 10th, 1891. A. H. Emanuel, clerk.

Title of Court and Cause.

Dem. & Ans. to Def't's Amended Answer.

Now comes the said plaintiff, and to the third paragraph of the amended answer of the defendant Angela Dias de Daley, in which paragraph she sets up a counter-claim and cross-complaint

18 and asks for affirmative relief against the said plaintiff, says that the said cross-complaint and counter-claim and demand for affirmative relief does not state facts sufficient to constitute a cause of action or sufficient to constitute a basis for any relief. Wherefore he prays judgment as to the same.

And for answer to said paragraph setting up said counter-claim plaintiff denies each and every allegation thereof.

Wherefore he prays judgment.

M. A. SMITH,
W. H. BARNES,
W. C. STAEHLE,
Plaintiff's Attorneys.

Endorsed: No. 1614. Title of court and cause. Dem. & ans. to amended ans. Filed May 26th, 1892. A. H. Emanuel, clerk.

Title of Court and Cause.

Motion to Suppress.

And now comes the plaintiff and moves the court to suppress the deposition of A. J. Mehan herein filed for the reason, 1st, that there is no affidavit that the witness Mehan resides without
 19 the Territory of Arizona or county of Cochise, where the suit is pending, or more than fifty miles from the place of trial.
 BARNES & STAHL.

Endorsed: No. 1614. Title of court and cause. Motion to suppress. Filed May 26th, 1892. A. H. Emanuel, clerk.

Title of Court and Cause.

Supplemental Amendment to Answer of Defendant Angela Dias.

And now comes the defendant Angela Dias, sued in this action by the name of Angela Dias de Daley, and, by leave of the court first had, files this her supplemental amendment to her amended answer and cross-complaint, heretofore, on the 10th day of November, 1891, filed in this action, as follows, to wit, amend defendant's cross-complaint herein by inserting on page 9 of this defendant's answer and cross-complaint, on line four, after the words "former
 20 name, Angela Dias," and immediately before the prayer, the following, to wit: "And this defendant, for further and supplemental answer to plaintiff's said complaint, avers that on the 18th day of October, 1890, and before the plaintiff, Adolph Cohn, bought the premises and property in his complaint herein and in the cross-complaint of this defendant described and set out, this defendant commenced an action in this court, numbered 1535, against James Daley and Andrew J. Mehan, the predecessors and grantors of plaintiff herein, and the defendant Dewitt C. Turner, to quite title to all the mines and mining claims in plaintiff's complaint and in the cross-complaint of this defendant set out and described, and on the said 18th day of October, 1890, and after the commencement of said action, this defendant caused to be filed and recorded in the office of the county recorder of this county where said property is situate a notice of the pendency of said action containing the names of the parties thereto, the object thereof, and a description of the property affected by said suit; that thereafter such proceedings were had in said action that on the 26th day of May, 1892, this court duly gave and made a judgment and decree in said action" that this defendant, plaintiff in that action, was the owner of all the mines and mining claims in the complaint in that action in plaintiff's complaint herein and in a cross-complaint of this defendant in this action set out and described and quieting the title of
 21 this defendant, plaintiff in that action, to all said mines and mining claims against said James Daley and Andrew J. Mehan, plaintiff's predecessors and grantors, and Dewitt C.

Turner, and against all persons claiming from or under them or either of them by title subsequent to the filing and recording of said notice.

That said plaintiff, Adolph Cohn, took title from said Andrew J. Mehan after the filing and recording of said notice to all said mines and mining claims, and has no other title to the same nor to any or either of said mines and mining claims.

JAMES REILLY,
Att'ys for Def't Angela Dias.

Endorsed: No. 1614. Title of court and cause. Supplemental amendment to answer of defendant Angela Dias. Filed by leave of court this 28th day of May, 1892. A. H. Emanuel, clerk.

Title of Court and Cause.

It is ordered and decreed that the default of A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, and F. C. Fisher, defendants herein, be, and the same hereby is, entered.

Dated May 24th, 1892.

22

Title of Court and Cause.

This being the day regularly set for the trial of this cause, comes now the plaintiff, by Messrs. W. C. Stahle and W. H. Barnes, of counsel, and comes now the defendant Angela Dias (or Angela Dias de Daley), by her attorney, James Reilly, Esq., and now, on motion of said James Reilly, the name of A. R. English, Esq., is ordered entered as counsel with said defendant herein, and a demurrer having — filed by said defendant, Angela Dias, to the complaint filed herein and coming now to be heard, and the court having now heard the arguments of the respective counsel thereon, it is now ordered that said demurrer be, and the same hereby is, sustained, with leave to amend said complaint *the said complaint*; whereupon the said complaint was immediately amended and the trial proceeded before the court sitting without a jury. On motion of said defendant, it is ordered that she have leave to amend her cross-complaint herein, which she accordingly does, and her amended cross-complaint is deemed filed as of this date. The plaintiff then, to maintain upon his part the issue herein, offered certain documentary evidence and the oral evidence of the witnesses W. F. Bradley and Charles G. Johnston, who were duly sworn and examined, and thereupon the plaintiff rested his case. The defendant Angela Dias, then

23

to maintain upon her part the issue herein, offered certain documentary evidence and the witnesses James Reilly, Angela Dias, R. P. Stevens, who were duly sworn and examined, and after offering the deposition of A. J. Mehan said defendant rests her case. The plaintiff in rebuttal offers the testimony of Frank Broad, Angela Dias, J. F. Duncan, S. Tribolet, A. Cohn, and W. F. Bradley and certain documentary evidence, and there rests his case in rebuttal.

The defendant then in surrebuttal recalled and examined James Reilly; whereupon the case and all evidence was declared

closed, and there being no further evidence, the trial proceeded upon the argument of the respective counsel until the usual hour of adjournment for the day, when a recess was taken herein until tomorrow morning at 9 o'clock.

Dated May 27th, 1892.

Title of Court and Cause.

The trial herein proceeds upon the argument of counsel for the respective parties, and the same being now fully presented and argued and submitted to the court, the same is now taken under advisement, with leave to the parties to file briefs.

Dated May the 28th, 1892.

24

Title of Court and Cause.

This cause having been tried and submitted at a prior term of this court, and the court, having taken the same under advisement and being now fully advised herein, does find the issue herein in favor of the defendant Angela Deias and against the plaintiff, A. Cohn, and does hereby order that judgment be entered accordingly and for costs. The said plaintiff thereupon gives notice of motion for new trial herein.

Dated November 22nd, 1892.

Title of Court and Cause.

Comes the parties hereto, by their attorneys of record, and fully argue and submit to the court the motion for a new trial herein, and the court does now take the same under advisement.

Dated Nov. 25th, 1892.

25

Title of Court and Cause.

The court, having taken under advisement the motion for a new trial herein and being now fully advised in the premises, does now overrule and deny said motion; to which ruling of the court plaintiff, by his counsel, instantly excepts and gives notice of appeal therefrom and from the judgment of the court herein to the supreme court, and the court does hereby grant to said plaintiff thirty days after the adjournment of this term to file his statement of facts herein.

Dated Nov. 26th, 1892.

Title of Court and Cause.

Decree Qui-ting Title.

This cause came on regularly to be heard in open court on the 27th day of May, 1892, William C. Staehle and W. H. Barnes, Esqs., appearing for the plaintiff, and James Reilly and Allen R. English, Esqs., appearing for the defendants Angela Dias, sued in plaintiff's complaint by the name of Angela Dias de Daley, and the defend-

ants A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, and F. C. Fisher not appearing.

The court having heard all the evidence and proofs produced by the respective parties appearing herein, and having taken
26 the same under advisement, and having duly considered the same, and being now fully advised in the premises, and it appearing therefrom to the satisfaction of the court:

First. That the defendants A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, and F. C. Fisher have each of them duly and regularly — summoned to answer unto plaintiff's complaint herein and have each made default in that behalf, and that the default of each of said defendants for not appearing and answering has been duly and regularly entered herein.

Second. That the proper name of the defendant sued by plaintiff under the name of "Angela Dias de Daley" is Angela Dias.

Third. That the allegation of plaintiff's complaint that plaintiff is the owner and entitled to the possession of the mining claims described in his complaint is not true.

Fourth. That said plaintiff does not own said mining claims nor any of them nor any interest in them nor in any of them.

Fifth. That each and every of the allegations of the cross-complaint and of the supplement to said cross-complaint of the said defendants, Angela Dias, are true, and that she is the owner and entitled to the possession of all the mining claims and interests in mining claims in her said cross-complaint in the plaintiff's complaint in this action and hereafter named and described, and is entitled to have a decree of this court quieting and settling her title thereto.

27 Now, therefore, it is ordered, adjudged, and decreed that the said defendant, Angela Dias, is the owner and entitled to the possession of all the mining claims and interests in mining claims in the cross-complaint in plaintiff's complaint in this action and hereinafter set out, named, and described as against said plaintiff, Adolph Cohn, and against each and every of the defendants A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, and F. C. Fisher.

And her title thereto is hereby settled and quieted as against said plaintiff and said defendants and each and every of them and all persons claiming or to claim under them or under any or either of them; and it is further ordered, adjudged, and decreed that said defendant, Angela Dias, do have and recover of and from the said plaintiff, Adolph Cohn, her costs incurred in this suit, taxed at \$91.55.

The lands, premises, mining claims, and interests in mining claims affected by this decree are situate in the Warren mining district, Cochise county, Territory of Arizona, and described, to wit:

The "George Washington" mining claim, located Jan. 1st, 1887, and recorded in Book 9 of Records of Location of Mines, at page 225, in the office of the county recorder of the aforesaid county of Cochise.

28 The "Old Republican" mining claim, located December 15th, 1887, and recorded in Book 9 of Records of Locations of Mines, at pages 84 and 85, in the office of the county recorder of the said county of Cochise.

The "Copper Frying Pan" mining claim, located January 22nd, 1889, and recorded in Book 11 of Records of Locations of Mines, at page 628, in the office of the county recorder of the aforesaid county of Cochise.

The "Angel" mining claim, located January 1st, 1887, and recorded in Book 11 of Records of Location of Mines, at page 225, in the office of the county recorder of the aforesaid county of Cochise.

An undivided one-half interest in and to the "Irish Mag" mining claim, located January 1st, 1886, and recorded in Book 11 of Records of Locations of Mines, at page 104, in the office of the county recorder of the aforesaid county of Cochise, and an undivided one-third interest in and to the "Copper Monarch" mining claim, located July 28th, 1888, and Recorded in Book 11 of Records of Mining Locations, at page 555, all which records of — are hereby referred to for a further description of said mining claims.

RICHARD E. SLOAN, Judge.

Endorsed: No. 1614. Title of court and cause. Decree quiet-titled. Filed Nov. 25th, 1892. A. H. Emanuel, clerk.

29

PUEBLO, COLO., Aug. 4, 1891.

Cohn Brothers, Tombstone, Ariz.

GENTLEMEN: I once more write to you to try and gain some information in regards to what was done in our case, and if you received a deed to the property, and, if so, have you got it in your possession yet; I trust that you have, as it will save litigation; I have worked hard to try and send you your money, but it has been such hard times in trying to make a sale of property that it has delayed me, but I think that I may be able to complete a sale in the next few days, and, if so, I am willing to pay the amount I owe you. I trust that you will give me a reply at your earliest attention, as I will not be here but a few days. I remain,

Yours resp.,

A. J. MEHAN.

(Endorsement on envelope:) Return to A. J. Mehan, Center Block hotel, El Paso, Texas. James Reilly, Esq., Tombstone, Arizona.

Endorsed: No. 1614. Exhibit. Filed May 27th, 1892. A. H. Emanuel, clerk.

30

Title of Court and Cause.

Bill of Exceptions.

Be it remembered that on the 27th day of May, 1892, the above cause came on regularly for trial, and during the progress thereof the following proceedings were had, as more fully appears in the statement of facts filed herein, expressly referred to, and the excep-

tions to rulings of court as therein shown are made a part of this bill of exceptions.

Exceptions by plaintiff to the rulings of the court as shown in the statement of facts were taken at the time such rulings were made.

I.

The defendant- offered in evidence the deposition of A. J. Mehan; to which the plaintiff objected on the ground of no showing of Mehan's absence. The court overruled the objection, and plaintiff then and there excepted.

II.

The defendant-, after trial had commenced, offered an amended answer setting up the judgment in the case of *Daly vs. Daly et al.* quieting title in favor of Mrs. Daly against any claim of defendants in said action. The plaintiff objected to such amended answer. The court overruled the objection, and plaintiff ex-
31 cepted.

III.

Defendant- offered in evidence the judgment-roll in case No. 1534, of Angela Dias de Daly *vs.* James Daly; to which offer the plaintiff then and there excepted on the ground that it was immaterial in this case, and the court overruled the objection; to which ruling the plaintiff excepted.

IV.

Defendant- then offered in evidence the judgment-roll in case of Angela Dias de Daley *vs.* James Daley, A. J. Mehan, *et al.*, No. 1535; to which plaintiff objected on the ground that the same was immaterial, irrelevant, and incompetent; which objection the court overruled, and plaintiff then and there excepted.

V.

The *lis pendens* filed in said case was likewise offered, and the same was objected to as immaterial; which ruling the court overruled, and plaintiff then and there excepted.

VI.

After certain testimony as to absence of Mehan, defendant- offered in evidence the deposition of A. J. Mehan; to which plaintiff objected on the ground that parol evidence cannot vary a deed, and that he could not be heard to dispute his title against a judgment creditor; which objection the court overruled, and plaintiff then and there excepted to the ruling, as fully appears in the state of facts.

32

VII.

The defendant- introduced Angela Dias de Daley; to whose testimony plaintiff objected on the ground that it was immaterial, incompetent and irrelevant, and inadmissible; which objection the court overruled, and plaintiff excepted.

VIII.

The defendants' counsel asked said Angela Daley: "In whose name did you suppose these mines were located?" which question was objected to as immaterial, and the objection was overruled and exception noted, and the answer, "In my name."

IX.

Defendant-questioning: "Why did you suppose that?" Same objection, same ruling and exception. Answer. "Because they were prospected with my money." Question by defendant: "Did Mr. Daley tell you anything about it?" Objected to as heresay and as incompetent. Objection overruled, and exception taken.

X.

Be it further remembered that on the cross-examination of the witness Angela Dias she was asked the following question by counsel for plaintiff, viz:

Did you not swear as a witness on that corner's inquest (referring to the inquest held on the body of one Lowther), in the presence of S. C. Perrin, that you were not the wife of James Daley?

33 Objected to by Mr. Barnes. It is for the purpose of contradicting her and testing her veracity.

By the COURT: You cannot contradict her upon an immaterial point.

By Mr. BARNES: I want to show that she swore upon that inquest that she was not James Daley's wife, but that she lived with him five years as housekeeper. It is to impeach the witness.

By the COURT: It cannot be material except as to the marriage, and the status of the parties was fixed by the divorce.

Exception by plaintiff.

XI.

The plaintiff offered to prove by Frank Broad (page 50, Transcript) that Mehan had made statements contradictory of the statements contained in his deposition. The defendant objected, and the court sustained the objection, and plaintiff then and there excepted.

XII.

Afterwards, to wit, on the 26th day of November, 1892, the court rendered judgment in favor of defendant Angela Dias and against plaintiff, and thereafter and within the statutory time plaintiff filed his motion for a new trial, which said motion appears in this record and made a part of this bill of exceptions, as follow-, viz:

34

Title of Court and Cause.

Motion for a New Trial and to Set Aside the Judgment.

Now comes the plaintiff, Adolph Cohn, and moves the court to set aside the judgment and grant a new trial of the above cause, and assigns therefore the following grounds, to wit:

1st. The court erred in the admission of irrelevant and incompetent testimony in that the court admitted in evidence the deposition of A. J. Mehan, which said deposition is in all respects irrelevant to any issue raised in the pleadings; that said testimony should have been excluded because in it is contained statements invalidating his title and is otherwise irrelevant and incompetent.

2nd. The court erred in refusing to allow testimony tending to contradict statements made in Mehan's deposition.

See Broad's test'y in transcript.

3rd. The court erred in refusing to permit the evidence of the defendant Mrs. Daley given before the coroner's jury in the inquest held on the body of one Lowther, which testimony tended to show that she was never married to Daley; and on the further ground that the said deposition before the coroner tended to contradict the statements made by the said defendant on the trial of the said cause.

35

See page 54, Transcript.

4th. The court erred generally in admitting improper evidence and refusing to admit proper and competent evidence; to which ruling exception was taken at the time.

5th. The judgment should be set aside and a new trial granted, because it is not sustained by the evidence in that (a) the evidence does not support the judgment, because there is no evidence showing any facts which in law creates a resulting trust in favor of the defendant Mrs. Daley; (b) the evidence fails to show that plaintiff had any actual or constructive notice of any equities in the defendant Mrs. Daley at the time of the attachment by plaintiff Cohn or at the time of purchase of the property by him; (c) the evidence, on the contrary, shows that plaintiff Cohn was an innocent purchaser for a valuable consideration and without notice; (d) the evidence shows that any money advanced by Mrs. Daley was a loan, and no trust could result in her favor; (e) the testimony of Mrs. Daley shows at best that it was community property and not separate estate; (f) there is no testimony tracing the money claimed as the separate property of Mrs. Daley to any particular piece of property in controversy in this action; (g) the evidence of Mrs. Daley shows that Mr. and Mrs. Daley located the property after marriage, and the act of location made the property community property, subject to the disposal of the husband.

36

See Transcript, pg. 35 & 36.

(h) the evidence shows that all money expended by Mrs. Daley was subsequently spent for support of the family and for assessment-work on the mines, no trust resulting.

See Transcript, pg. 37.

6th. The court erred in admitting in evidence the record in the divorce suit, Daley vs. Daley.

7th. The court erred in admitting the record in the case of Daley vs. Daley *et al.*, the plaintiff not being bound by it.

8th. The court erred in refusing to permit plaintiff to show that Mr. and Mrs. Daley were not husband and wife at the time of the location of the claims in controversy.

9th. The court erred in permitting in evidence of the *lis pendens* filed by Mrs. Daley after the attachment by Cohn and filed in and to which Cohn was not a party.

10th. The judgment is not supported by the evidence (1st) in that Mehan's testimony was irrelevant, and (2nd) if relevant it was broken down by testimony as to his reputation for truth and veracity, and by proof of contradictory statements made elsewhere; (3) the burden of proof being on defendants to prove a trust in favor of Mrs. Daley, there is no evidence in the record tending to show facts from which any trust could result.

37 11th. The evidence shows that the plaintiff Cohn was at the time of filing this suit the owner of the property described in the complaint.

Wherefore it is respectfully submitted that the judgment be set aside and a new trial granted to plaintiff in this cause.

WM. H. BARNES,
M. A. SMITH,
WM. C. STAHLER,
Attorneys for Plaintiff.

Endorsed: No. 1614. Title of court and cause. Motion for a new trial and to set aside judgment. Filed November 25th, 1892. A. H. Emanuel, clerk.

The court overruled the motion for a new trial on all the grounds therein stated; to which ruling of the court plaintiff then and there excepted and still excepts, and presents this his bill of exceptions and asks that the same be signed and allowed, and it is done accordingly.

BARNES & MARTIN,
M. A. SMITH, &
W. C. STAHLER,
Att'ys for Plaintiff.

38 The foregoing bill of exceptions were presented to me for allowance on this 1st day of December, 1892, and on this day forwarded by mail to James Reilly, Esq., counsel for defendants, for inspection.

RICHARD E. SLOAN, *Judge.*

The foregoing bill of exceptions having been submitted by plaintiff on the 1st day of December, 1892, to the judge trying the cause and having been by him submitted to the counsel for defendants, and the objections thereto made by said counsel for defendant having been heard and considered *was* on this 15th day of December, 1892, the same is settled, allowed, signed, and made a part of the record of this case.

RICHARD E. SLOAN, *Judge.*

Endorsed: No. 1614. Title of court and cause. Bill of exceptions. Filed Dec. 16th, 1892. A. H. Emanuel, clerk.

And on the 18th day of May, 1893, there was filed in said cause a statement of facts, which — in the words and figures following, to wit:

24, p. 257.

B. W. Tichenor (official court reporter), agent for the Hammond typewriter, Tucson, Arizona.

39 Statement of facts as completed. Filed May, 1893.
A. H. EMANUEL, Clerk.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLPH COHN, Plaintiff,

vs.

ANDREW J. MEHAN ET AL., Defendants. }

Transcript of shorthand notes of testimony, etc., taken from the trial of the above-entitled cause, at the court-room of said court, in the city of Tombstone, on Friday, the twenty-seventh day of May, A. D. 1892, at 9.30 o'clock a. m., before the court (Hon. Richard E. Sloan presiding) sitting without a jury, in the presence of W. C. Staehle, Esq., attorney for, and W. H. Barnes, Esq., of counsel with, plaintiff, and James Reilly, Esq., attorney for defendant Angela Dias de Daley; Allen R. English, Esq., for counsel.

Demurrer was argued and sustained by the court and the pleadings amended by leave to conform to ruling.

40 Plaintiff moved to suppress the deposition of A. J. Mehan on the ground that no affidavit of place of residence of said Mehan was made or filed in this cause before the said deposition was taken.

Motion denied. Plaintiff excepts.

The pleadings were then read by the respective counsel.

Mr. Reilly, on behalf of defendant, moved for leave to amend the cross-complaint and answer of Angela Diaz de Daily by inserting therein another cause of cross-complaint as follows: "That on the 18th day of October, 1890, this defendant Angela Diaz de Daily commenced an action in this court against James Daily, Andrew J. Mehan, and Edward C. Turner to quiet title to the property described in plaintiff's complaint and in this cross-complaint, and that on said day she filed a notice of the pendency of said action in the office of the county recorder of this county; that thereafter such proceedings were had in said action that afterwards and on the 26th day of May, 1892, this court duly made and gave a judgment and decree in favor of this defendant and against said James Daily, Andrew J. Mehan, and Edward C. Turner, quieting title to all said property against said defendants and all persons claiming from or

under them after the filing of said notice; that said Andrew J. Mehan is the same person mentioned in plaintiff's complaint from whom the plaintiff in this action derived title."

41 (The said amendment was by the court permitted.)

Mr. Barnes, for plaintiff, asked leave to amend the complaint herein by pleading the jurisdiction of the district court.

The amendment was permitted.

Mr. Barnes, on behalf of plaintiff, thereupon offered in evidence the location notice of the George Washington mining claim, located by James Daily Jan. 1st, 1887, and recorded in Book 11, p. 225, of records of mining claims for the county of Cochise :

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, I have this day located and claim fifteen hundred linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit :

Commencing at this monument of stones, being the center of the southeast end of claim and upon which this notice is posted, thence northeast 300 feet to a monument of stones, thence northwest 1,500 feet to a monument of stones, thence southwest 300 feet to a monument of stones, being the center of the northwest end of claim; thence southwest 300 feet to a monument of stones, thence south-
 42 east 1,500 feet to a monument of stones, thence northeast 300 feet to the place of beginning.

This claim is situated in the Mule mountains, Warren mining district, Cochise county, Arizona, and about three-quarter mile east of the town of Bisbee, and shall be known as the George Washington mine, located January 1st, 1887.

Locator, JAMES DALY.

TERRITORY OF ARIZONA, {
 County of Cochise. }

I, A. Wentworth, county recorder in and for the county of Cochise, hereby certify that the above and foregoing is a full, true, and correct copy of the George Washington mining claim location notice, as appears of record now in my office, in Book 11, page 628.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
 County Recorder.

Endorsed : Recorder's office, Tombstone, Cochise county, A. T.
 Filed and recorded at request of James Daley, January 3rd, A. D.

1887, at 9 a. m., Book 11, Records of Mines, page 225. Filed February 10th, 1893. W. F. Bradley, county recorder. Filed February 10th, 1893. A. H. Emanuel, clerk.

43 Also location notice of the Old Republican mining claim, located by James Daily Dec., 1888, and recorded in Book 9, p. 84, of records of mining claims for Cochise county, as follows, viz :

"B."

Location Notice.

Notice is hereby given that I, the undersigned, hereby locate and claim 1,500 feet on this lode, lead, or vein, together with 300 feet on each side of said vein, beginning at this monument of stones wherein this notice is posted, being the southeast center of said claim, thence three hundred feet in a northeasterly direction; thence 1,500 feet northwesterly to a monument of stones; thence 300 feet southwesterly to a monument of stones, being the northwest center of said claim; thence 300 feet southwesterly to a monument of stones; thence 1,500 feet in a southeasterly direction to a monument of stones; thence 300 feet northeasterly to the place of beginning. This claim lies in the Warren mining district, about 1 mile east of Bisbee, in Mule pass, and north of the county road running parallel with the claim known as the George Washington, and shall be known as the Old Republican. Dated on the ground this 15th day of December, 1888.

Locator, JAMES DALEY.

Witnesses :

W. G. WINSOR.

This claim is in the county of Cochise, Territory of Arizona.

44 TERRITORY OF ARIZONA, } ss :
County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Old Republican mining claim location notice as appears of recorded now in my office, in Book 9, page 84.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
County Recorder.

(Endorsed :) 1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of James Daley, January 11th, A. D. 1889, at 10 a. m., Book 9, Record of Mines, page 84. W. F. Bradley, county recorder. Filed Feb. 10, 1893. A. H. Emanuel, clerk.

Also location notice of the Copper Frying Pan, located by James Daily, Feb. 7th, 1889, recorded in Book 11, p. 628, of records of mining claims for Cochise county, as follows, viz:

45

"C."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, have this day located and claim 1,500 linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and 100 feet from center of the claim — feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit: Commencing at this monument of stones, being the center of the east center of claim and upon which this notice is posted, thence runs north 100 feet to a monument of stones, thence west 1,500 feet to a monument of stones, thence runs south 100 feet to a monument of stones, being the center of west end of claim; thence east 1,500 feet to a monument of stones, thence 100 feet to the place of begin-ing. This claim joins the Sacramento on the north side line, and joins the south line of the Cleav-land, and on the east by the Stars and Stripes, and parallel of the north side of the Vet-ran, and running parallel of the south side line of the Angel, and about $\frac{3}{4}$ of a mile east of Bisbee, in the Mule pass, and shall be known as the Copper Frying Pan mine.

Located January 22nd, 1889.

JAMES DALEY.

46 TERRITORY OF ARIZONA, } ss:
County of Cochise, }

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Copper Frying Pan mining claim location notice as appears of record now in my office, in Book 11, page 628.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1897.

[SEAL.]

A. WENTWORTH,
County Recorder.

1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of James Daley, February 7, A. D. 1889, at 9 a. m., Book 11, Records of Mines, page 628. W. F. Bradley, county recorder. Filed Feb. 10, 1893. A. H. Emanuel, clerk.

Also location notice of the Iris May mining claim, located by Chas. Altschul and James Daily, Jan. 1st, 1886, and recorded in Book 11, p. 104, records of mining claims for Cochise county, as follows, viz:

"D."

Location Notice.

47 Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, have this day located and claim 1,500 *hundred* linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and 300 feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the northeasterly end of claim and upon which this notice is posted, thence easterly 300 feet to a monument of stones; thence northerly 1,500 feet to a monument of stones; thence westerly 300 feet to a monument of stones, being the center of the southerly end of claim; thence westerly 300 feet to a monument of stones; thence northerly 1,500 feet to a monument of stones; thence easterly 300 feet to the place of beginning.

This claim is situated in the Mule Mountain mining district and about one-half mile from the Copper Queen smelter, southeasterly and running parallel with Keystone mine, and shall be known as the Irish May mining claim; located January 1st, 1886.

Locators: { CHAS. ANSHUTZ.
JAMES DALEY.

Witness:

GEO. H. EDDLEMAN.

48 TERRITORY OF ARIZONA, { ss:
County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Irish May mining claim location notice as appears of record in my office, in Book 11, page 104.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1897.

A. WENTWORTH,
County Recorder.

[SEAL.]

Endorsed: 1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of Chas. Anshutz, January 6, A. D. 1886, at 11 a. m, Book 11, Record of Mines, page 104. W. F. Bradley, county recorder. Filed Feb. 10, 1893. A. H. Emanuel, clerk.

Also location notice of the Old Canteen mining claim, located by James Daily and others January 1st, 1889, and recorded in Book 9, p. 89, of records of mining claims for Cochise county, as follows, viz:

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim fifteen hundred linear feet or less along the course of this lead, lode, or vein of mineral-bearing quartz and three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona Territory, and more particularly described as follows, to wit: Commencing at this monument of stones, being the center of the east end of claim and upon which this notice is posted, thence north 300 feet to a monument of stones, the same being placed against the southeast corner monument of the Cumberland mine; thence west 1,500 feet or less along the south side line of the Cumberland mine to the east side line of the Little New York mine to a monument of stones; thence south along the east side line of the Little New York mine three hundred feet to a monument of stones, being the west center end of claim; thence south along the east side line of the Little New York mine and to the north side line of the Virginins mine fifteen hundred feet or less to a monument of stones; thence north three hundred feet to place of beginning. This claim is situated in the Mule mountains and on the easterly slope in what is called Mule pass, about one and

50 one-half miles east of the town of Bisbee, and shall be known as the Old Canteen mine; located Jan. 1st, 1889.

JAMES DALEY.

CHARLES E. BARTHOLOMEW.
W. F. BRADLEY.

Witness:

R. D. DICKEY.

JOHN A. LENOARD.

TERRITORY OF ARIZONA, }
County of Cochise, } ss:

I, A. Wentworth, county recorder in and for the county of Cochise, hereby certify that the above and foregoing is a full, true, and correct copy of the Old Canteen mining claim location notice, as appears of record now in my office, in Book 9, page 89.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

A. WENTWORTH,
County Recorder.

[SEAL.]

1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of James Daley, January 28th, A. D. 1893, at 10 a. m., Book 9, Records of Mines, page 89. W. F. Bradley, county recorder. Filed Feb. 10, 1893, at — o'clock — m. A. H. Emanuel, clerk.

Also location notice of the Copper Monarch mining claim, located by James Daily and others July 28, 1888, and recorded in Book 11, p. 555, records of mining claims for Cochise county, as follows, viz:

"F."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim four hundred and ten linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the southwest end of claim and upon which this notice is posted, thence easterly three hundred feet to a monument of stones; thence north four hundred and ten feet to a monument of stones; thence westerly three hundred feet to a monument of stones, being the center of the northeast end of claim; thence westerly three hundred feet to a monument of stones; thence southwest four hundred
 52 hundred feet to a monument of stones; thence easterly three hundred feet to the place of beginning. This claim is a relocation of the gold-bearing mining claim, the owners of said claim having failed to perform their assessment-work for the year 1887. This claim is situated and running parallel with the Keystone mining claim and joins the Silver Spray mining claim and about a $\frac{1}{4}$ mile from the Holbrook mine, and shall be known as the Copper Monarch mine. Located on the ground July 28th, 1888.

Locators: { JAMES DALEY.
 CHARLES NUGENT.
 W. F. BRADLEY.

Witness:

J. DORAN.

TERRITORY OF ARIZONA, } ss:
 County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Copper Monarch mining claim location notice as the same appears of record now in my office, in Book 11, page 555.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

A. WENTWORTH,
 County Recorder. [SEAL.]

1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded, at request of James Daley, July 30, A. D. 1888, at 9 a. m., Book 11, Record of Mines, pages 555. W. F. 53 Bradley, county recorder. Filed Feb. 10, 1893, at — o'clock — m. A. H. Emanuel, clerk.

Also location notice of the Intervenor mining claim, located by James Daily and others Dec. 24th, 1889, and recorded in Book 11, p. 613, records of mining claims for Cochise county, as follows, viz:

"G."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim 1,500 (fifteen hundred) linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and (300) three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warran mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the west end of claim upon which this notice is posted, thence three hundred (300) feet to a monument of stones; thence east fifteen hundred (1,500) feet to monument of stones; thence south three hundred (300) feet to a monument of stones, being the center
54 of the east end of claim; thence south three hundred (300) feet to a monument of stones; thence west fifteen hundred (1,500) feet to a monument of stones; thence north three hundred (300) feet to the place of beginning. This claim is situated about one and one-half miles east of the town of Bisbee, in Mule gulch, and joins the Erie Cattle Co. mine on the west end, and shall be known as the Intervenor mine; located Dec. 24th, 1888.

JAMES DALEY.

CHARLES E. BARTHOLOMEW.

G. S. BRADSHAW.

Witness:

EDWARD KANE.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Intervenor mining claim location notice, as appears of record now in my office, in Book 11, page 613.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
County Recorder.

1614. Copy. Recorder's office, Tombstone, Cochise Co.,
 55 A. T. Filed and recorded at request of Chas. E. Bartholomew
 January 19th, 1889, at 9 a. m., Book 11, Record of Mines,
 page 613. W. F. Bradley, county recorder. Filed Feb. 10, 1893,
 at — o'clock — m. A. H. Emanuel, clerk.

Also location notice of the Angel mining claim, located by James
 Daily, January 1st, 1887, and recorded in Book 11, p. 225, records
 of mining claims for Cochise county, as follows, viz:

"H."

Location Notice.

Notice is hereby given that the undersigned, in compliance with
 the requirements of the mining act of Congress approved May 10th,
 1872, I have this day located and claim eight hundred linear feet
 along the course of this lead, lode, or vein of mineral-bearing quartz
 and three hundred feet on each side of the middle of said lead, lode,
 or vein, situate in the Warren mining district, county of Cochise,
 Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the
 west end of claim and upon which this notice is posted, thence north
 300 feet to a monument of stones, thence east 800 feet to a monu-
 56 ment of stones, thence south 300 feet to a monument of stones,
 being the center of the east end of claim; thence south 300
 feet to a monument of stones, thence west 800 feet to a monu-
 ment of stones, thence north 300 feet to the place of beginning.
 This claim is situated in the Mule mountains, Warren mining dis-
 trict, Cochise county, and about one-half mile east of the town of
 Bisbee, and shall be known as the Angel mine; located January
 1st, 1887.

Locator, JAMES DALY.

TERRITORY OF ARIZONA, }
 County of Cochise, } ss:

I, A. Wentworth, county recorder in and for the county of Cochise,
 do hereby certify that the above and foregoing is a full, true, and
 correct copy of the Angel mining claim location notice, as appears
 of record now in my office, in Book 11, page 225.

In witness whereof I have hereunto set my hand and affixed my
 official seal, at my office, in Tombstone, this 10th day of February,
 A. D. 1893.

A. WENTWORTH,
 County Recorder.

[SEAL.]

1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T.
 Filed and recorded at request of James Daly January 3rd, A. D.
 1887, at 9 a. m., Book 11, Record of Mines, pages 225. W. F. Bradley,
 county recorder. Filed Feb. 10, 1893, at — o'clock — m. A. H.
 Emanuel, clerk.

57 Also location notice of the Diadem mining claim, located by James Daily and others Dec. 24th, 1889, and recorded in Book 11, p. 613, records of mining claims for Cochise county as follows, viz:

"I."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim (1,500) fifteen — linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and (300) three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the east end of claim and upon which this notice is posted, thence north three hundred (300) feet to a monument of stones, thence west fifteen hundred (1,500) feet to a monument of stones, thence south three hundred (300) feet to a monument of stones, being the center of the west end of claim; thence south three hundred (300) feet to a monument of stones, thence east fifteen hundred (1,500) feet to a monument of stone, thence north three hundred (300) feet to the place of beginning.

This claim is situated about one and one-half miles east of the town of Bisbee, in Mule gulch, and joins the Erie Cattle Co. mine on its south side and shall be known as the Diadem mine; located Dec. 24th, 1889.

JAMES DALY.

CHARLES E. BARTHOLOMEW.

G. S. BRADSHAW.

Witness:

EDWARD KANE.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Diadem mining claim location notice, as appears of record now in my office, in Book 11, page 613.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1897.

A. WENTWORTH,
County Recorder.

[SEAL.]

1614. Copy. Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of C. E. Bartholomew January 19th, A. D. 1889, at 9 a. m., Book 11, Record of Mines, page 613. W. F. Bradley, county recorder. Filed Feb. 10, 1893, at — o'clock — m. A. H. Emanuel, clerk.

59 Also certified copy of deed from James Daley to Andrew J. Mehan, dated Sept. 2nd, 1890, conveying mining claims situated in the Warren mining district, Cochise Co., Ariz., known as George Washington, Republican, Copper Frying Pan, the Angel, one-half of the Irish Mag, one-third of Copper Monarch, one-third of Intervena, one-third — Old Canteen, and one-third of Diadem; which said deed is recorded in the office of the county recorder of Cochise county, in Book 11, p. 226, deeds of mines, and is as follows, viz:

"J."

Deed of Daly to Mehan.

This indenture made the 2nd day of September in the year of our Lord, one thousand eight hundred and ninety, between James Daley of the county of Pueblo, State of Colorado, party of the first part, and Andrew J. Mehan, of the county of Pueblo, State of Colorado, party of the second part; witnesseth, that the said party of the first part, for and in consideration of the sum of one hundred (100) dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part and to his heirs and assigns all the following-described mining claims, to wit: mining claim situated

60 in Warren mining district, Cochise county, Territory of Arizona known as "George Washington" mining claim situated in Warren mining district, Cochise county, Territory of Arizona known as the "Republican," mining claim situated in the Warren mining district, Cochise county, Territory of Arizona, known as "Copper Frying Pan," mining claim situated in Warren mining district, Cochise county Territory of Arizona, known as "the Angel," one-half of mining claim situated in Warren mining district, Cochise county, Territory of Arizona, known as "Irish Mag," one-third of mining claim situated in Warren mining district, Cochise county, Territory of Arizona, — "Copper Monarch," one-third of mining claim situated in Cochise county, Territory of Arizona, and Warren mining district, known as "Intervenor" one-third of mining claim situated in Warren mining district, Cochise county, Territory of Arizona, known as "Old Canteen," and one-third of mining claim situated in Warren mining district, Cochise county, Territory of Arizona, known as "Diadem," together with all the dips, spurs and angles, and also all the metals, ores, gold, and silver bearing quartz, rock and earth therein, and all the right, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed.

And also all — singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title,

61 interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

JAMES DALEY. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. H. WHITE.

STATE OF COLORADO, }
County of Pueblo, } ss:

I, S. Harrison White, notary public in and for said county, in the State aforesaid, do hereby certify that James Daley, who is personally known to me to be the person whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 2nd day of September, A. D. 1890.

S. HARRISON WHITE,
Notary Public. [SEAL.]

62 Filed and recorded at request of A. J. Mehan, September 11th, A. D. 1890, at 1 p. m.

W. F. BRADLEY,
County Recorder.

TERRITORY OF ARIZONA, }
County of Cochise, } ss:

I, W. F. Bradley, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of a deed from James Daley to A. J. Mehan, as appears of record now in my office, in Book 11, page 226, deeds of mines.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 23rd day of May, A. D. 1892.

W. F. BRADLEY,
County Recorder.

[SEAL.]

Endorsed: No. 1614. Title of court and cause. Deed, Daley to Mehan. Filed May 24th, 1892. A. H. Emanuel, clerk.

Also certified copy of deed from A. T. Carr, constable, precinct No. 1, Cochise Co., to A. Cohn, of Tombstone, for all right, title,

and interest of Andrew J. Mehan in the following mining claims in Warren mining district severally known and located as the "George Washington" M. C., "Copper Frying Pan" M. C., "Angel" M. C., "Irish Mag" M. C., "Copper Monarch" M. C., "Inter-
 63 venor" M. C., "Old Canteen" M. C., and "Diadem" M. C., etc., sold by virtue of a writ of execution, dated Sept. 29th, 1890, in favor of said Cohn and against said Mehan :

"K."

This indenture made the first day of May in the year of our Lord one thousand eight hundred and ninety-one, between S. T. Carr, constable, precinct No. one, county of Cochise, Territory of Arizona, the party of the first part, and A. Cohn of the city of Tombstone, county of Cochise, Territory of Arizona, the party of the second part, whereas by virtue of a writ of execution issued out of and under the hand of Chas. G. Johnson, Esq., justice of the peace, in and for precinct No. one, county of Cochise, Territory of Arizona, tested the 29th day of September, 1890, upon a judgment recovered in said court on the 29th day of September, 1890, in favor of A. Cohn as plaintiff and against A. J. Mehan, defendant to the said constable directed and delivered commanding him that out of the personal property of said judgment debtor in his said county, he should cause to be made certain moneys in the said writ specified and if sufficient personal property of the said judgment debtor could not be found, then he should cause the amount of said judgment to be made out of the real property belonging to said judgment debtor on the 13th day of September, 1890, or at any time afterwards; and whereas, because sufficient personal property of the said judgment debtor could not be found, whereof, the said constable could cause to be made the moneys specified in
 64 said writ the said constable did, in obedience to said command, levy on, take and seize all the right, title, interest and claim which the said judgment debtor so had, of, in, and to the lands, tenements, real estate and premises hereinafter particularly set forth and described, with the appurtenances and did, on the 27th day of October, 1890, sell all the right, title, interest and claim of the said judgment debtor in and to the said premises at public auction in front of the court-house in the city of Tombstone, in said county of Cochise, Territory of Arizona, between the hours of nine in the morning and five in the afternoon of that day, namely at 12.30 o'clock p. m., after having given due notice of the time and place of such sale by publication and posting according to law, at which sale all the estate, right, title, interest and claim of said judgment debtor in and to the said premises were struck off and sold to the said party of the second part, for the sum of three hundred and forty-nine and $\frac{5}{10}$ (\$349.55) dollars, lawful money of the United States of America, the said party of the second — being the highest bidder, and that being the highest sum bid for the same; whereupon the said constable after receiving from the said purchaser the said sum so bid as aforesaid, gave to the said party

of the second part such certificate of said sale as by law directed to be given and a duplicate of such certificate was duly filed by the said constable in the office of the recorder of said county of Cochise, A. T. And whereas six
65 months after said sale have expired without any redemption of the said premises having been made: Now this indenture

witnesseth: that the said S. T. Carr, constable aforesaid, by virtue of the said writ, and in pursuance of the statute in such cases made and provided for and in consideration of the said sum to him in hand paid as aforesaid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part and to his heirs and assigns forever, all the estate, right, title, interest and claim which the said judgment debtor A. J. Mehan had on the said 13th day of September, 1890, or at any time afterwards, or now has, in and to all those certain lots, pieces or parcels of land, situate, lying and being in the said county of Cochise, Territory of Arizona, and bounded and particularly described as follows, to wit:

The following mining claims in Warren mining district, severally known and located as the "George Washington" M. C., "Old Republican" M. C., "Copper Monarch" M. C., "Copper Frying Pan" M. C., "Angel" M. C., "Irish Mag" M. C., "Copper Monarch" M. C., "Intervenor" M. C., "Old Canteen" M. C., and "Diadem" M. C. All of which said mining claims are duly recorded in the recorder's office of Cochise county, A. T., to which records reference is hereby expressly made and constitute the particular description of said several mining claims and made a part of this indenture.

66 Together with all and singular the tenements, herid-taments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the said premises with the appurtenances unto the said party of the second part his heirs and assigns forever, as fully and absolutely as he the said constable can, may, or ought to, by virtue of the said writ and of the statute in such case made and provided grant, bargain, sell, convey and confirm the same.

In witness whereof, the constable, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

S. T. CARR, [SEAL.]

*Constable, Precinct No. 1, County of Cochise,
Territory of Arizona.*

Signed, sealed, and delivered in the presence of—
W. C. STAEBLE.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

On this fourth day of May, A. D. 1891, personally appeared before me, W. C. Staehle, a notary public in and for the county of

Cochise, Territory of Arizona, the within-named S. T. Carr, constable, precinct No. 1, county of Cochise, A. T., known to me to be the person described in and whose name is subscribed to the within instrument, and he as such constable acknowledged
67 to me that he as such constable of precinct No. 1, county of Cochise, A. T., executed the same for the uses, purposes, and consideration therein mentioned.

In witness whereof I have hereunto set my hand and affixed my notarial seal, at my office, in Tombstone, Cochise county, Arizona Territory, the day and year in this certificate first above written.

W. C. STAEHLE,
Notary Public. [SEAL.]

Filed and recorded at request of A. Cohn May 4th, A. D. 1891,
I. P.

W. F. BRADLEY,
County Recorder.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, W. F. Bradley, county recorder in and for the county of Cochise, do hereby certify that the above is a full, true, and correct copy of a deed from S. T. Carr, constable, to A. Cohn, as appears of record now in my office, in Book 11, page 291, deeds of mines.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 23rd day of May, A. D. 1892.

[SEAL.] W. F. BRADLEY,
County Recorder.

Endorsed: No. 1614. Certified copy of deed from S. T. Carr, constable, to A. Cohn. A. Cohn vs. A. J. Mehan *et al.* Filed May 24th, 1892. A. H. Emanuel, clerk.

The certified copy aforesaid was objected to on the ground that it was secondary evidence, the original of said deed being in
68 the possession of plaintiff.

Mr. Barnes thereupon introduced and offered in evidence the original of said deed.

Objected to on the ground that it described no property.

Admitted, subject to objection, said objection to be presented and argued on final hearing of the case.

Mr. W. F. BRADLEY, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. BARNES:

Q. What office do you hold, Mr. Bradley?

A. County recorder.

Q. Of Cochise county, Arizona?

A. Yes, sir.

Q. (Exhibiting several papers.) Are these papers in your custody as such recorder?

A. Yes, sir.

Q. And the date of filing is endorsed on them by you?

A. Yes, sir.

By Mr. BARNES: Now, I will offer these papers referred to by Mr. Bradley in evidence. The first is the writ of attachment in the case of Cohn v. Daley in the justice's court. It is filed September 13th, 1890. I offer the paper and the file-mark, and will have a certified copy of it made and left with the clerk as an exhibit in this case, and is as follows, viz:

Ex. "L."

In the Justice's Court of Precinct No. One, County of Cochise, Territory of Arizona.

69	A. COHN, Plaintiff, vs. A. J. MEHAN, Defendant.	}	Writ of Attachment. Demand, \$299.00.
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The Territory of Arizona to the sheriff or any constable of Cochise county, Greeting:

We command you that you attach forthwith so much of the property of A. J. Mehan, if to be found in your county repleviable, on security, as shall be of value sufficient to make the sum of two hundred and ninety-nine (\$299.00) dollars and the probable costs of this suit, to satisfy the demand of A. Cohn, and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon to be had before the court, and that you make return of this writ, showing how you have executed the same.

Given under my hand, at my office, in said precinct No. one, this 13th day of September, 1890.

CHARLES G. JOHNSON,
Justice of the Peace.

TERRITORY OF ARIZONA, }
County of Cochise, } 23:

I hereby certify and return that I received the within writ on the 13th day of September, 1890; that I executed the same by levying upon the following-described property, to wit, being mining claims in Warren mining district, Cochise county, Territory of Arizona, known and located as "George Washington," "Old Republican," "Copper Frying Pan," "Angel," "Irish Mag," "Copper Monarch," "Intervenor," "Old Canteen," and "Diadem" mining claims, and filed a copy of this levy with the recorder of Cochise county, Territory of Arizona.

Dated Sept. 13th, 1890.

S. T. CARR, *Constable.*

TERRITORY OF ARIZONA, } ss:
 County of Cochise, }

I, W. F. Bradley, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of a writ of attachment, A. Cohn, plaintiff, vs. A. J. Mehan, defendant, as appears on file now in my office.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 27th day of May, A. D. 1892.

W. F. BRADLEY,
County Recorder.

RECORDER'S OFFICE, TOMBSTONE,
 COCHISE COUNTY, A. T.

Filed at request of S. T. Carr, September 13th, A. D. 1890, at 11.15 a. m.

W. F. BRADLEY,
County Recorder.

Endorsed: No. 1614. Copy. Title of court and cause. Writ of attachment issued the 13th day of September, 1890. C. G. Johnson, J. P. Received this summons on the 13th day of September, 1890, at 10 o'clock a. m. S. T. Carr, constable. Filed May 27th, 1892. A. H. Emanuel, clerk.

By Mr. REILLY: We object to the officer's return on this paper on the ground that it is void for want of description.

By the COURT: It may go in now and the objection may be argued on the hearing.

By Mr. BARNES: I now offer in evidence the execution in the same case and the certificate of filing, October 6, 1890; also the other paper, endorsed "Certificate of sale of real estate on execution in case of Cohn vs. Mehan," and also the certificate on the back, showing it to have been filed Oct. 30, 1890, all of which are as follows, viz:

EXHIBIT "M."

In the Justice's Court of Precinct No. One, County of Cochise, Territory of Arizona, before Chas. G. Johnson, a Justice of Peace.

The Territory of Arizona to the sheriff or any constable of Cochise county, Greeting:

Whereas a judgment was rendered before me, a justice of the peace of precinct No. one, in said county of Cochise, on the 29th day of September, A. D. 1890, against A. J. Mehan and in favor of A. Cohn, for the sum of two hundred and ninety-nine dollars, damages, and twelve and $\frac{55}{100}$ dollars, cost of suit:

These are, therefore, to command you that you levy and cause

to be made, by distress and sale, as the law directs, the
 72 said amount of two hundred and ninety-nine dollars and
 — dollars, costs of suit, together with the costs that may
 accrue, and of this writ make legal service and due return within
 sixty days from the date hereof.

Given under my hand, at my office, in said precinct No. one, this
 29th day of September, 1890.

CHAS. G. JOHNSON,
Justice of the Peace.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, S. T. Carr, constable, hereby certify that by virtue of the fore-
 going execution I levied upon the following property, to wit,
 mining claims in Warren mining district, Cochise county, Terri-
 tory of Arizona, known and located as "George Washington," "Old
 Republican," "Copper Frying Pan," "Intervenor," "Angel," "Irish
 Mag," "Copper Monarch," "Old Canteen," and "Diadem" mining
 claims, on the 29th day of September, 1890.

S. T. CARR, *Constable.*

Dated September 29th, 1890.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, W. F. Bradley, county recorder in and for the county of
 73 Cochise, do hereby certify that the above and foregoing is a
 full, true, and correct copy of an execution, A. Cohn, plain-
 tiff, vs. A. J. Mehan, defendant, as appears on file now in my office.

In witness whereof I have hereunto set my hand and affixed my
 official seal, at my office, in Tombstone, this 27th day of May, A. D.
 1892.

W. F. BRADLEY, [SEAL.]
County Recorder.

RECORDER'S OFFICE,
 TOMBSTONE, COCHISE COUNTY, A. T.

Filed at request of S. T. Carr, Oct. 6th, A. D. 1890, at 3 p. m.

W. F. BRADLEY,
County Recorder.

Endorsed: No. 1614. Title of court and cause. Execution. Filed
 May 27th, 1892. A. H. Emanuel, clerk.

Certificate of Sale.

TERRITORY OF ARIZONA, }
 County of Cochise, } ss:

Before C. G. Johnston, J. P., precinct No. one.

A. COHN, Plaintiff, }
 vs. } Judgment Rendered on the 29th Day of
 A. J. MEHAN, Defendant. } September, 1890.

I, S. T. Carr, constable of the precinct, county, and Territory aforesaid, do hereby certify that by virtue of an execution in the above cause, attested the 29th day of September, 1890, by which I was commanded to make the amount of three hundred and eleven and $\frac{55}{100}$ dollars to satisfy the judgment in this action, with interest thereon and costs, out of the personal property of the above defendant, and if sufficient personal property could not be found, then out of the real property belonging to the said defendant on the 13th day of September, 1890, or at any time thereafter, as by the said writ, reference being thereunto had, more fully appears, I have levied upon and this day sold at public auction, according to the statute in such cases made and provided, to A. Cohn, who was the highest bidder, for the sum of three hundred and forty-nine and $\frac{55}{100}$ dollars, which was the whole price paid by him for the same, the real estate described as follows, to wit: Being mining claims in Warren mining district, county of Cochise, Territory of Arizona, known and located as the George Washington, Old Republican, Copper Frying Pan, Angel, Irish Mag, Copper Monarch, Intervenor, Old Canteen, and Diadem mining claims, more particular description of which appears in the records of the recorder's office of the county of Cochise, Arizona, and that the said real estate is subject to redemption in six months, pursuant to the statute in such cases made and provided.

Given under my hand this 27th day of October, 1890.

S. T. CARR, *Constable.*

75 TERRITORY OF ARIZONA, }
 County of Cochise, } ss:

I, W. F. Bradley, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of a certificate of sale, A. Cohn vs. A. J. Mehan, as appears now on file in my office.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 27th day of May, 1892.

W. F. BRADLEY,
County Recorder.

[SEAL.]

Endorsed: No. 1614. Title of court and cause. Certificate of sale of real estate on execution. Filed and recorded at request of

S. T. Carr, October 30th, A. D. 1890, at 11 a. m. W. F. Bradley, county recorder, by C. A. Buddington, deputy. Filed May 27th, 1892. A. H. Emanuel, clerk.

By Mr. REILLY: The writ of attachment is objected to because it does not refer to any record. We also object to the certificate of sale, because it does not contain any description by which the property can be identified.

By Mr. BARNES: I now offer in evidence the justice's docket and the papers in the case of A. Cohn vs. A. J. Mehan, before Mr. Johnson, justice of the peace.

76 CHARLES GRANVILLE JOHNSON, a witness called and sworn on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. BARNES:

Q. What office do you hold?

A. Justice of the peace.

Q. What office did you hold Sept. 13, 1890, and for a year before and a year after that?

A. Justice of the peace of precinct No. 1, Cochise county.

Q. (Exhibiting book.) What book is that?

A. My docket.

Q. As justice of the peace?

A. Yes, sir.

By Mr. BARNES: Now, I offer the entry on page 137 of this docket, being the docket of the justice of the peace for precinct No. 1, township 1, Cochise county, Arizona; C. G. Johnson, J. P.; A. Cohn, plaintiff, vs. A. J. Mehan, defendant; action for debt; demand, \$299.00; Wm. C. Staehle, att'y for pl'tff; A. R. English, att'y for defendant.

1890, Sept. 13.—Complaint and affidavit filed; case docketed; affidavit for attachment filed; undertaking on attachment approved and filed; writ of attachment issued and copy of same; summons issued; also copy of same, and defendant personally served; and same returned and filed.

Sept. 27.—Defendant appears by A. R. English, his attorney, and pleads the general denial and demands bill of particulars.

77 "29.—Now comes plaintiff's attorney and asks for judgment upon the ground that the statute requires a written demand for bill of particulars, and case set for hearing and argument Sept. 29th, 1890, at 2 o'clock p. m., and files three notes sued upon. Two p. m., case called, plaintiff appearing by himself and by his attorney, Wm. C. Staehle, Esq., and no one on behalf of defendant; plaintiff sworn on his own behalf; cause submitted, and, after due consideration of the law and the evidence, it is ordered, adjudged, and decreed that the plaintiff have judgment, as prayed for in his complaint, viz., for the sum of two hundred and ninety-nine dollars, together with his costs of suit, amounting to the sum of twelve

and $1\frac{5}{8}\%$ —, and that plaintiff have execution therefor. C. G. Johnson, J. P. Justice's fees, \$6.75; constable's do., \$5.80.

1890, Sept. 29.—Execution issued on demand of plaintiff, \$1.25. Oct. 27.—Affidavit of publication taken and filed, also affidavit of posting notices, and execution returned satisfied (except costs).

Here is what was filed in the case—simply the amount due on three promissory notes, wa-ving any accruing sum beyond the \$299. Here is the writ of attachment, with endorsements of levy on the same, and affidavit of posting notices. Here is the summons, 78 issued Sept. 23, 1890, served by delivering the defendant a true copy.

The writ of attachment and levy is just like the ones I read, which were copies of these.

And here is notice of appeal by A. R. English, attorney of defendant, Oct. 4, 1890. Here, too, is the execution and return. Here is the affidavit for attachment and bond on attachment, and here are the notes sued on. We offer all these papers in evidence, and upon this we rest our case. They are as follows, viz:

"N."

Title of Court and Cause.

The Territory of Arizona send- a greeting to A. J. Mehan, defendant:

You are hereby summoned and required to appear in an action brought against you by the above-named plaintiff in the said justice's court, before said justice of the peace, at his office, Fremont street, city of Tombstone, Cochise county aforesaid, and to answer the said complaint filed therein within five days (exclusive of the day of service) after the service on you of this summons, if served within this precinct, or if served without this precinct, but in this county, within ten days, or if served out of this county within fifteen days, otherwise within twenty days, or judgment by default will be taken against you according to the prayer of said complaint. The said action is brought to recover two hundred and ninety-nine 79 dollars, United States gold coin, and you are hereby notified that if you fail to appear and answer the said complaint, as above required, the plaintiff will apply for judgment by default against you for said sum and all costs.

Given under my hand, at my office, this 13th day of Sept., A. D. 1890.

CHAS. G. JOHNSON,

Justice of the Peace in and for said Precinct, County, and T.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I hereby certify and return that I executed the within summons on the 23rd day of September, 1890, by delivering to the within-named defendant in person a true copy of this summons.

S. T. CARR, Constable.

Endorsed: Title of court and cause. Summons. Received for service this 13th Sept., 1890, at 10 o'clock a. m. S. T. Carr, constable. Returned and filed Sept. 23rd, 1890, at one o'clock p. m. Chas. G. Johnson, justice of the peace. Filed Feb. 8th, 1893. A. H. Emanuel, clerk.

Complaint.

TOMBSTONE, ARIZONA, Sept. 1st, 1890.

Mr. A. J. Mehan.

80

A. Cohn, Dr.

To amount due on three promissory notes (the holder waiving any accruing sum thereon) beyond \$299.00... \$299.00

\$54.75.

TOMBSTONE, January 29, 1886.

One day after date, without grace, I promise to pay to the order of A. Cohn fifty-four $1\frac{5}{8}$ dollars, for value received, with interest at one per cent. per month from date until paid, both principal and interest payable only in United States gold coin.

A. J. MEHAN.

\$30.00.

TOMBSTONE, January 29th, 1886.

One day after date, without grace, I promise to pay to the order of A. Cohn thirty dollars, for value received, with interest at one per cent. per month from date until paid, both interest and principal payable only in United States gold coin.

A. J. MEHAN.

\$204.75.

TOMBSTONE, April 11th, 1887.

One day after date, without grace, I promise to pay to the order of A. Cohn two hundred and four $1\frac{5}{8}$ dollars, for value received, with interest at — per cent. per — from — until paid, both principal and interest payable only in United States gold coin.

81

A. J. MEHAN.

Endorsed: Title of court and cause. Before C. G. Johnson, J. P. Complaint. Filed Sept. 13th, 1890. C. G. Johnson, J. P. Filed Feb. 8th, 1893. A. H. Emanuel, clerk.

Affidavit for Attachment.

Title of Court and Cause.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

A. Cohn, being first duly sworn, says that he is the plaintiff in the above-entitled cause; that said defendant, A. J. Mehan, is justly indebted to said plaintiff over and above all set-offs and counter-claims in the sum of two hundred and ninety-nine (\$299) dollars, and that the defendant is not a resident of this Territory; that said

claim is due, unpaid, and unsecured; that this attachment is not sued out for the purpose of injuring or harassing the defendant, and the plaintiff will probably lose his debt unless an attachment is issued.

A. COHN.

Subscribed and sworn to this 13th day of Sept., 1890.

W. C. STAEHLE,
Notary Public. [SEAL.]

82 Endorsed: Title court and cause. Affidavit for attachment. Filed this 13th day of Sept., 1890. Chas. G. Johnson, justice of the peace. No. 1614. Filed Feb. 8th, 1893. A. H. Emanuel, clerk.

Bond on Attachment.

TERRITORY OF ARIZONA, { ss:
County of Cochise,

We, the undersigned, A. Cohn, as principal, and J. B. Miano and Emil Sydow, as sureties, acknowledged ourselves bound to pay to A. J. Mehan the sum of five hundred and ninety-eight (\$598.00) dollars; conditioned that the above-bounden A. Cohn, plaintiff in attachment against the said A. J. Mehan, defendant, will prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment.

Witness our hands this 13th day of September, 1890.

A. COHN.
JOHN B. MIANO.
EMIL SYDOW.

Affidavit of sureties attached.

Subscribed and sworn to this 13th day of September, 1890.

W. C. STAEHLE,
Notary Public. [SEAL.]

83 Endorsed: Title of court and cause. Bond on attachment. Approved and filed this 13th day of September, 1890. Chas. G. Johnson, justice of the peace. No. 1614. Filed Feb. 8th, 1893. A. H. Emanuel, clerk.

Affidavit of Posting Notice of Constable's Sale.

TERRITORY OF ARIZONA, { ss:
County of Cochise,

Before C. G. Johnson, J. P., precinct No. one.

S. T. Carr, of Tombstone, Arizona, being duly sworn, deposes and says that he is constable, duly qualified and acting as such in the county of Cochise, Arizona; that he posted three notices, of which the attached notice is a copy, on the 2nd day of October, 1890—one

at the door of the court-house in said county, one at the post-office in the city of Tombstone, and one at the office of W. C. Staehle, on Allen street, same city; and further saith not.

A. T. CARR.

Subscribed and sworn to before me this 27th day of October, 1890.

W. C. STAEHLE,
Notary Public. [SEAL.]

Endorsed: Title of court and cause. Aff. of posting notices. Filed Oct. 27th, 1890. C. G. Johnson, J. P. Filed Feb. 8th, 1893. A. H. Emanuel, clerk.

84

Notice of Constable Sale.

By virtue of an execution issued out of Justice C. G. Johnson's court of No. one precinct, county of Cochise, Territory of Arizona, dated the 29th day of September, 1890, in a certain action wherein A. Cohn, as plaintiff, recovered judgment against A. J. Mehan for the sum of two hundred and nine-nine and twelve and $\frac{5}{100}$ dollars, costs of suit, on the 29th day of September, 1890—

I have levied upon the following-described property, to wit: Being mining claims in Warren mining district, Cochise county, Territory of Arizona, known and located as the "George Washington," "Old Republican," "Copper Frying Pan," "Angel," "Irish Mag," "Copper Monarch," "Intervenor," "Old Canteen," and "Diadem" mining claims; more particular description—which appears in the records of the recorder's office of Cochise county.

Notice is hereby given that on Monday, the 27th day of October, 1890, at one o'clock p. m. of that day, in front of the court-house in the city of Tombstone, county of Cochise, Arizona, I will sell all the right, title, and interest of the said defendant, A. J. Mehan, in and to the above-described property at a public auction, for cash in United States currency, to the highest and best bidder, to satisfy said execution and all costs. Dated at Tombstone the 2nd day of October, 1890.

S. T. CARR, *Constable.*

85

By Mr. ENGLISH: We desire to show that the notes sued on in this case *was* barred by the statute of limitations.

By the COURT: That may be a matter of defence, but it is not matter that goes to the jurisdiction.

By Mr. BARNES: In that connection, the record shows that the defendant was there and did not plead it.

By Mr. REILLY: In addition to the other objections to the attachment that it does not describe the property, I now move on this docket to strike out the attachment altogether on the ground that it was issued without authority of law. The justice's docket shows that the writ of attachment was issued before the summons, and there is no authority in the justice's court to issue a writ of attachment before summons issued.

Objection overruled. Exception by defendant.

By Mr. ENGLISH: Another objection is that the docket does not show that attachment was issued against the defendant, and does not show any continuance of the case from the 27th to the 29th, the latter being the day on which judgment was rendered. There is no evidence that the defendant ever appeared in the justice court after the 27th.

The whole objection is that it is immaterial and does not show the jurisdiction of the court, does not show any judgment against the defendant, *and does not show any judgment against the de-*
86 *fendant*, and does not show the issuance of execution.

By the COURT: It will go in subject to the objection, and the objection may be argued with the case.

By Mr. REILLY: We now offer in evidence the judgment-roll in the case numbered 1534 in this court, being the case of Angela Diaz de Daley *vs.* James Daley, as follows, viz:

Title of Court and Cause No. 1534.

Judgment and Decree by the Court, May 4th, 1891.

This cause coming on to be heard this 14th day of May, 1891, upon the complaint herein taken as confessed by the defendant, whose default for not answering had been duly entered by the clerk of this court, and upon the proofs submitted to the court on the part of plaintiff, from which it appears to the satisfaction of this — that all the material allegations of the said complaint are sustained by testimony free from legal exceptions as to its competency, admissibility, and sufficiency, and it also appearing to said court that said defendant was duly served with the summons, and all and singular the law and the premises being by the court here understood and fully considered—

Wherefore it is here ordered, adjudged, and decreed, and this — does order, adjudge, and decree, that the marriage between the said plaintiff, Angela Dias de Daily, and the said defendant,
87 James Daily, be dissolved, and the same is hereby dissolved, and the said parties are and each of them is freed and absolutely released from the bonds of matrimony heretofore existing between the said plaintiff and the said defendant and from all the obligations thereof.

And it is further ordered, adjudged, and decreed that the plaintiff is the equitable owner of all the interest, right, and title in and to the following-described mines and mining claims, the legal title to which was at the commencement of this action and prior thereto in the defendant, and that she recover the same, to wit:

The "George Washington," located January 1st, 1887; recorded in Book 11, Records of Mines, at page 225.

The "Old Republic," located December 15th, 1888; recorded in Book 9, Record of Mines, at pages 84 and 85.

The "Copper Frying Pan," located January 22nd, 1889; recorded in Book 11, Records of Mines, at page 628.

The "Angel" mine, located January 1st, 1887; recorded in Book 11, Records of Mines, at page 225.

The "Old Canteen," located January 1st, 1889; recorded in Book 9, Records of Mines, at pages 89 and 90.

The "Diadem mine," located January 24th, 1888; recorded in Book 11, Records of Mines, at page 613.

The "Intervenor mine," located December 21st, 1888; recorded in Book 11, Records of Mines, at page 613.

88 The "Irish Mag" mine, located January 1st, 1886; recorded in Book 11, Records of Mines, at page 104.

The "Copper Monarch" mine, located July 28th, 1888; recorded in Book 11, Records of Mines, at page 555, in the office of the county recorder of this county of Cochise, all situate in the Warren mining district, in the county of Cochise, Territory of Arizona, with the improvements thereon and the appurtenances thereto in anywise belonging; all which property is worth about three thousand dollars.

And it is further ordered and decreed that the said plaintiff may resume her former name of Angela Dias.

Done in open court this 14th day of May, 1891.

RICHARD E. SLOAN, *Judge*.

By Mr. BARNES: We object to it because it does not bind us; we were not parties to it.

By Mr. REILLY: We offer it only so far as it is binding on the whole world. We admit it is not conclusive evidence on the question of property. We introduce it for the purpose of showing that the defendant here was the wife of James Daley, and that a decree of divorce was granted by this court in that case, and that her name is now Angela Diaz.

(Objection renewed.)

Objection overruled. Exception by plaintiff.

89 By Mr. REILLY: We now introduce the judgment-roll in the case of Angela Diaz de Daley vs. James Daley, Andrew J. Mehan, *et al.*, case No. 1535, in this court:

Title of Court and Cause No. 1535.

Judgment by the Court, May 26th, 1892.

This cause came on regularly for trial on this 26th day of May, 1892, James Reilly, Esq., appearing as counsel for plaintiff, and Allen R. English, Esq., who heretofore appeared as counsel for the defendants Andrew J. Mehan and Dewitt C. Turner, have, at the November term of this court, 1891, withdrawn from the case, and the default of the defendant James Daley having been duly entered by the clerk of this court, and the said defendants, Mehan and Turner, having failed to appear, either in person or by counsel, at this term of court, and it appearing to the satisfaction of the court that each and every of said defendants have been duly served with summons in this action and failed to appear at this term of court:

This cause was tried before the court without a jury; whereupon

plaintiff introduced her evidence, oral and documentary, and the evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon the court finds that each and every of the allegations in plaintiff's complaint contained are true and sustained by competent evidence, free from all objections as to its sufficiency, materiality, and relevancy.

90 Wherefore it is ordered, adjudged, and decreed that the plaintiff, whose name is now Angela Dias, is the owner of the following-described mines and mining claims and interests in mining claims situate in Warren mining district, county of Cochise, Territory of Arizona, to wit, the "George Washington," located January 1st, 1887, and recorded in Book 11 of Records of Mines, at page 225; the "Old Republican," located December 15th, 1888, and recorded in Book 9 of Records of Mines, at pages 84 and 85; the "Copper Frying Pan," located January 22nd, 1889, and recorded in Book 11 of Records of Mines, at page 628; the "Angel," located January 1st, 1887, and recorded in Book 11 of Records of Mines, at page 225; the undivided half of the "Irish Mag," located January 1st, 1886, and recorded in Book 11 of Records of Mines, at page 104; and an undivided third interest in each of the following-named mining claims, to wit, the "Copper Monarch," located July the 28th, 1888, and recorded in Book 11 of Records of Mines, at page 555; the "Intervenor," located December 24th, 1888, and recorded in Book 11 of Records of Mines, at page 613; the "Old Canteen," located January the 1st, 1889, and recorded in Book 9 of Records of Mines, at pages 89 and 90; the "Diadem," located January 24th, 1888, and recorded in Book 11, Records of Mines, at page 613, all of said records being in the office of the county recorder of the said county of Cochise.

91 And that defendants have not nor has either or any of them any right, title, or interest in or to said mines or mining claims or interests in mining claims nor in any or either of them, and that the deed made by the defendant James Daley to the defendant Andrew J. Mehan, dated September 2nd, 1890, and recorded in Book 11 of Deeds of Mines, at page 223, and the deed made by the defendant Andrew J. Mehan to the defendant Dewitt C. Turner on the 15th day of September, 1890, and recorded in Book 11 of Deeds of Mines, at page 228, all in the office of the county recorder of the aforesaid county of Cochise, be, and the same are hereby, cancelled of record as a cloud on plaintiff's title to said property.

And if further appearing to the satisfaction of this court that plaintiff caused to be filed and recorded in the office of the county recorder of the county of Cochise aforesaid, after this action was commenced, to wit, on the 18th day of October, 1890, a notice of the pendency of this action in all respects as required by statute, it is further adjudged and decreed that the title of said plaintiff to all of said property be quit-^{ted} as against said defendant, James Daley, Andrew J. Mehan, and De Witt C. Turner, and all persons claiming

from or under them or either of them by title subsequent to the filing and recording of said notice.

Dated May 26th, 1892.

By order of the court:

92

RICHARD E. SLOAN, *Judge*.

By Mr. BARNES: We were not parties to that suit, could not be heard in it, and are not bound in any way by the judgment in that case.

By the COURT: Before it could be material to this inquiry you must show that this plaintiff had either actual or constructive notice of the pendency of the action.

By Mr. REILLY: In that suit we offer notice of *lis pendens* filed with the county recorder Oct. 18, 1890, Book 1, *Lis Pendens*, pages 143, 144, affecting the same mining claims.

By Mr. BARNES: We admit that is Mr. Bradley's signature on the back of it, and that he is the recorder of Cochise county, and *and* that this document is in his possession as such county recorder, but we object to it for the reasons before stated.

By the COURT: Let it go in subject to the objection.

It is as follows, viz:

EXH. "O," LIS PENDENS.

Title of Court and Cause.

Notice of Pendency of Action.

Notice is hereby given that an action has been commenced in the above-entitled court by the above-named plaintiff against the above-named defendants to set aside deeds and remove clouds on title and to quiet the title of plaintiff to the premises and real estate in
93 the complaint in said action and hereinafter described, and to determine all and every claim of the defendants or either or any of them adverse to plaintiff, and that the premises affected by said suit are situated in the Warren mining district, county of Cochise, Territory of Arizona, and described as follows, to wit:

The "George Washington" mine, located January 1st, 1887, and recorded in Book 11, Records of Mines, page 225; the "Old Republic" mine, located December 15th, 1888, and recorded in Book 9, Records of Mines, pages 84 and 85; the "Copper Frying Pan" mine, located January 22nd, 1889, and recorded in Book 11, Records of Mines, page 628; the "Angel" mine, located January 1st, 1887, and recorded in Book 11, Record of Mines, at page 225; an undivided one-half interest in the "Irish Mag" mine, located January 1st, 1886, and recorded in Book 11, Records of Mines, page 104; an undivided one-third interest in the "Copper Monarch" mine, located July 28th, 1888, and recorded in Book 11, Records of Mines, page 555; an undivided one-third interest in the "Intervenor" mine, located December 24th, 1888, and recorded in Book 11, Records of Mines, page 613; an undivided one-third interest in the

"Old Canteen" mine, located January 1st, 1889, and recorded in Book 9, Records of Mines, pages 89 and 90; an undivided one-third interest in the "Diadem" mine, located January 24th, 1888, and recorded in Book 11, page 613.

All of which records hereinbefore referred to are in the office of the county recorder of the county of Cochise, Territory of
94 Arizona.

Dated October, 1890.

JAMES REILLY,
Att'y for Pl'ff.

TERRITORY OF ARIZONA, }
County of Cochise, } ss :

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of a *lis pendens*, Daley vs. Daley, Mehan, & Turner, as appears of record now in my office, in Book 1, page- 143, 144.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 11th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
County Recorder.

RECORDER'S OFFICE, TOMBSTONE, COCHISE CO., A. T.

Filed and recorded, at request of James Reilly, October 18th, A. D. 1890, at 9.25 a. m., Book 1, *Lis Pendens*, page- 143, 144.

W. F. BRADLEY,
County Recorder.

Filed Feb. 11th, 1893.

A. H. EMANUEL, *Clerk.*

By Mr. REILLY: We now offer the deposition of Andrew J. Mehan, filed in this cause.

95 By Mr. BARNES: We object to the materiality of questions and answers numbered 6, 7, 8, 9, 10, and 11 in this deposition, on the ground that it is an attempt to vary a deed by parol and an attempt to create an express trust by parol.

By the COURT: Read the deposition and I will consider the objection.

(Deposition read) and is hereto attached and marked Exh. "Z."

By Mr. BARNES: There is a further objection to the 8th question and answer, as stating what James Daley told the witnesses; therefore it is heresay.

EXH. "Z."

Interrogatories.

To be answered by Andrew J. Mehan, as a witness in the case of Adolph Cohn vs. Andrew J. Mehan, Dewitt C. Turner, Bell H. Chandler, F. C. Fisher, and Angela Dias de Daley, No. 1614, in district court, Cochise county, Arizona.

1st interrogatory. State your name and age.

2nd Inter. Are you a defendant in this action?

3rd Inter. Do you know your codefendants or any of them? And if you do, state which and how many of them you do know.

4th Inter. Do you know one James Daley, a former resident of Bisbee, Arizona?

96 5th Inter. Where were you on the 2nd day of September, 1890?

6th Inter. If, in answer to the last question, you say that on the 2nd day of September, 1890, you were in Pueblo, State of Colorado, then state whether or no you saw the said James Daley then or there; also state whether or no you saw then and there your codefendants Turner, Chandler, and Fisher, or either of them.

7th Inter. If, in answer to the last question, you state that you saw said James Daley at Pueblo, State of Colorado, on or about September 2nd, 1890, then state fully what, if any, transactions you had with him then and there, and whether or no any of your codefendants were present at such transactions; if so, which of them.

8th Inter. If, in answer to the last question, you say that said Daily on or about September 2nd, 1890, conveyed to you any property, state what property, where situated, what you did with the deed, whether or no you had it recorded, and, if so, where and what consideration, if any, you paid for that property, and state the whole transaction and conversations had between yourself and Daley about that property at that time.

97 9th Inter. If, in answer to the 7th question, you say that said Daley conveyed to you any mines or interests in mines, then state whether or no you afterwards conveyed the same mines or any interests therein to any other person; and, if so, state when and to whom you made the first conveyance and what consideration, if any, was paid therefor.

10th Inter. If, in answer to the last question, you say that you conveyed an interest in certain or any mines to your codefendant Dewitt C. Turner, then state whether said Turner at or prior to said conveyance knew the nature of the transactions between yourself and the aforesaid James Daley concerning said mines or interests in said mines, either or both, and if he did, state how he knew it, who told him, and whether you were present at the time.

11th Inter. State now all the conversations, as nearly as you can, had, if any, with said Turner about certain mines known as the Daley mines, situate near Bisbee, Arizona, prior to the 15th day of

September, 1890, and in particular what, if anything, you told him about the title and ownership of said Daley mine.

JAMES REILLY,

Attorney for Angela Dias de Daley, Defendant.

98 No cross-interrogatories were filed.

A. H. EMANUEL, *Clerk.*

Endorsed: No. 1614. Deposition of A. J. Mehan. Opened by Judge Barnes May 23rd, 1892. I received the within package from the hands of J. B. Collier, notary public, this 4th day of Feb., 1892. Ella G. Timversy, P. M. Received from P. O., Tombstone, Feb. 10th, 1892. A. H. Emanuel, clerk. Filed Feb. 10th, 1892. A. H. Emanuel, clerk.

EXH. "Z."

Title of Court and Cause.

Deposition of A. J. Mehan.

TERRITORY OF NEW MEXICO, } ss:
County of Lincoln,

Be it remembered that pursuant to the commission hereto annexed and on the 4th day of February, A. D. 1892, at White Oaks, in the county of Lincoln, Territory of New Mexico, before me, J. B. Collier, a notary public in and for said county, personally came ANDREW J. MEHAN, personally known to me, who, being by me first duly sworn, was then and there examined by me on the interrogatories hereto and to said commission annexed, and answered said interrogatories as follows, to wit:

99 To the 1st Inter. he saith: My name is Andrew J. Mehan. My age is 38 years.

To the 2nd Inter. he saith: I am.

To the 3rd Inter. he saith: I know them all, Turner, Chandler, Fisher, and Mrs. Daley.

To the 4th Inter. he saith: I do.

To the 5th Inter. he saith: Was in Pueblo, State of Colorado, on the 2nd day of September, 1890.

To the 6th Inter. he saith: I saw James Daley then and there. I did not on that day see any of the other defendants.

To the 7th Inter. he saith: On that day, September the 12th, 1890, the said James Daley made a deed to me of mines and interests of minessituate in Warren mining district, Cochise county, Arizona. None of my codefendants were present.

To the 8th Inter. he saith: The property conveyed by that deed consisted of the George Washington mine, the Old Republican, the Copper Frying Pan, the Angel, a half interest in the Irish Mag, a one-third interest in Copper Monarch, situate — Warren mining district, Cochise county, Arizona, and some others. I had the deed recorded in the office of the recorder of Cochise county, Arizona. I

100 paid no consideration for that property. I promised to take care of the property for his wife, and make a sale of the property and satisfy Mrs. Daley after paying my own expenses. Mr. Daley said it was his wife's money that made the property.

To the 9th Inter. he saith: I afterwards conveyed a half interest in these mines to Dewitt C. Turner, the defendant, on or about the 15th day of September, 1890. He paid nothing for that deed.

To the 10th Inter. he saith: At the date of that deed said defendant, Turner, knew the nature of the transactions between myself and the said James Daley about said mines. I told him myself.

To the 11th Inter. he saith: I told him all the conversations between myself and Daley about the Daley mines; that Daley said the mines were good; that — wanted his wife protected; and I told him all the instructions given me by Daley and all the promises I made to him.

ANDREW J. MEHAN.

Subscribed and sworn to before me this 4th day of February,
A. D. 1892.

[SEAL.]

J. B. COLLIER,
Notary Public.

101 TERRITORY OF NEW MEXICO, } ss:
County of Lincoln,

I, J. B. Collier, notary public in and for said county, do hereby certify that Andrew J. Mehan, the witness named in the commission hereto annexed, came before me on the 4th day of February, at White Oaks, Lincoln county, New Mexico, and was by me first duly sworn to make truthful answers to the interrogatories hereto annexed, and thereupon made answer to said interrogatories as set down in the foregoing deposition, containing three pages, exclusive of this one, which answers were by me reduced to writing, and when completed *was* by me carefully read over to him, and, being by him corrected, were by him subscribed and sworn to in my presence.

In witness whereof I have hereunto set my hand and seal of office this 4th day of February, A. D. 1892.

J. B. COLLIER,
Notary Public.

[SEAL.]

Notary fees, \$5.00.

102 JAMES REILLY, a witness called and sworn on behalf of defendant, testified as follows:

Direct examination.

By Mr. ENGLISH:

By the WITNESS: I know Andrew J. Mehan. I have known him about eleven years. I cannot for a certainty tell where he is now. I am satisfied he is not in this Territory. I got a letter from

him four days ago, from El Paso. He wrote me some four or five times in the last six months from New Mexico (interrupted)——

Objected to as not the best evidence. Objection sustained.

Q. You heard from him at El Paso, Texas, did you?

Objected to because the writing is the best evidence.

A. I will state now that I know he was in El Paso four or five days ago.

By Mr. BARNES :

Q. Did you see him there?

A. No, sir. I got letters and telegrams from him.

By Mr. BARNES: Then we object to any testimony that is not of your own knowledge unless you produce it.

By the COURT: Yes; produce them.

By Mr. ENGLISH (resuming):

Q. How long has it been since Andrew J. Mehan was seen in the county of Cochise, to your knowledge?

103 A. One year and nine months.

Q. Have you ever heard that he was in the county since that time?

Objected to as immaterial. Objection sustained.

A. I have not.

Q. You say you received a letter from him in El Paso four days ago?

A. Six or seven; I don't remember which.

Q. Please produce the letters you have received.

A. I don't keep those letters usually, but I will produce one of them.

By the COURT: Well, produce the letters, Mr. Reilly.

By the WITNESS: I don't know as I can produce more than one. I will have to hunt considerable, but I think *it* will find them.

(Witness retired from the stand, and returned after an absence of about ten minutes.)

This is the letter before the last that I got from Mehan (producing a letter). We offer the date of the letter and the envelope and the signature of Mehan to show where he is.

By Mr. BARNES: We object to it.

Q. In whose handwriting do the words "A. J. Mehan" on the outside of the envelope appear, if you know?

Objected to.

A. I am well acquainted with the handwriting of Andrew J. Mehan; this is his signature; this letter is in his writing.

Q. Where did you receive this?

104 A. I received it at Tombstone some days after the postmark there.

By Mr. REILLY: I offer in evidence this envelope, with the handwriting of A. J. Mehan on the outside and the postmark "El Paso, Texas, May 16, 1892," and the card "Return to Center Block hotel, El Paso, Texas," and addressed "James Reilly, Esq., Tombstone, Arizona," and on the back of it appears the Tombstone post-office mark, May 17, 1892.

Objected to.

By Mr. BARNES:

Q. What came inside of it?

A. A letter which I have in my hand.

By Mr. BARNES: I object to the offer of the envelope along, because, in the first place, it does not prove anything. It is mere hearsay. All of it might have been done right here in this town. The postmarks are not evidence of anything.

By the COURT: It may go in, subject to the objection.

By Mr. ENGLISH: We also offer in evidence the letter which came in the envelope, dated El Paso, Texas, May 16, 1892, signed by Andrew J. Mehan. We do not offer the body of the letter—the private correspondence.

By Mr. BARNES:

Q. Was there another letter enclosed in this envelope?

A. No, sir.

By Mr. BARNES: I will read this letter to the court.

By the COURT: I do not care to hear the contents of it. It is not material.

105 By the WITNESS: This is not the last letter I got from him. I got one on the 22nd or 23rd. The last time I saw him, I saw him in New Mexico, about three months ago.

By Mr. BARNES:

Q. I will ask you if you know whether this man Mehan has any interest in the result of this suit.

A. Not to my knowledge.

Q. Do you know whether or not he has a contract, deed, or paper-writing of some kind by which this woman agrees to give him part of this property if it is recovered?

A. Not to my knowledge.

Q. You never heard of such a thing?

A. Never heard of such a thing.

Q. From him or from her?

A. Never heard of such a thing from her or him.

By Mr. ENGLISH: We now offer in evidence a subpoena issued in this case for Andrew J. Mehan and which bears the return that the sheriff made due inquiry and that the within-named party is not

in the Territory. Signed C. B. Kelton, sheriff. The date of the subpoena is today—May 27th, 1892.

Objected to as immaterial and incompetent.

By Mr. ENGLISH: It was issued today and returned today. We now offer the deposition of said Andrew J. Mehan already read.

106 (At this point Joseph Madero was sworn as interpreter of the Spanish language for witnesses who could not speak English.)

ANGELA DIAZ, the defendant, called and sworn in her own behalf, testified (through the interpreter) as follows:

Direct examination.

By Mr. REILLY:

Q. What is your name?

A. Angela Diaz.

Q. What was your name over a year ago?

A. Angela Diaz de Daley.

Q. Are you the same person who procured a divorce in this court a year ago from James Daley?

A. Yes, sir.

Q. And are you a defendant in this action?

A. Yes, sir.

Q. Were you a party plaintiff in an action in this court yesterday in the case of Angela Diaz vs. James Daley, Mehan, and Turner?

By Mr. BARNES: Oh, there is no question about her being the same party.

Q. When did you marry James Daley?

A. I don't recollect.

Q. How long since, do you know?

A. At this date it would be seven years.

Q. How long did you live together, you and he?

A. A little over five years.

Q. When did you separate?

A. The 11th day of April.

Q. What April—how many years ago?

A. Two years ago.

107 Q. When you married Mr. Daley did you have any money or property?

Objected to as immaterial. Objection overruled.

A. I had money.

Q. How much?

A. Three thousand dollars.

By Mr. BARNES: We make the same objection to all this testimony.

Q. Did Mr. Daley have any money?

Objected to as immaterial.

A. No, sir.

Q. Did Mr. Daley earn any money during the five years that you were husband and wife?

By Mr. BARNES: That is objected to as immaterial.

We do not care for a ruling now, as it is being heard by the court, and there is no jury here.

A. No, sir.

Q. What became of that three thousand dollars that you had?

Objected to as immaterial.

A. Mr. Daley spent it in prospecting and working the mines, and for the maintenance of both of us.

Q. What mines; do you recollect the names of those mines?

Objected to as immaterial.

A. I recollect some of the names; not all.

Q. Give some of them that you recollect.

108 A. Irish Mag, Washington, Republican, Angel, Copper Pan; I don't recollect the names of the others.

Q. Were there others?

A. I think so.

Q. Were not the Copper Monarch and the Diadem and Old Canteen in these?

Objected to as leading. Objection sustained.

Q. Do you know of any other mines?

A. I don't recollect the names.

Q. Who located these mines?

A. Mr. Daley.

Q. Who was with him?

A. I was.

Q. Who built the monuments?

A. Him and myself.

Q. Did you know, during that five years, that the title to those mining claims was in the name of James Daley?

Objected to as immaterial.

A. No, sir; I did not.

Q. In whose name did you suppose they were?

Objected to as immaterial.

A. In my name.

Q. Why did you suppose that?

Objected to as immaterial.

A. Because they were prospected with my money.

Q. Did Mr. Daley tell you anything about it?

Objected to. Objection overruled.

Exception by plaintiff.

A. He told me they were in my name.

109 Q. Could you read English—call it American—language?

A. No, sir.

Q. Do you understand anything about the laws or the language of this country?

Objected to as immaterial.

By the COURT: I do not think that material. Ignorance of the law is not proper to be considered; ignorance of the fact may be shown.

Q. Did you ever sell or convey any of the right to these mines to anybody?

A. I have not sold or conveyed anything.

Q. When did you first know that the title to these mines were in the name of Daley?

Objected to as immaterial.

A. The first intimation I had was when the man Andy Mehan came to me and told me that he had the documents.

Q. When was that, whether after or before your separation from Daley?

A. That was when Daley was gone.

Q. Do you know how long after Daley was gone?

A. Five or six months.

Q. Was all of that \$3,000 of yours used in working these mines?

Objected to as leading. Objection sustained.

Q. What has become of that \$3,000 of yours?

Objected to as repetition.

A. Spent in prospecting and working the mines and for our maintenance.

110 Q. These mines you have mentioned?

Objected to as leading.

Q. What mines?

A. In the Irish Mag.

Q. Any others?

A. Angel.

Q. Any others?

A. Washington.

Q. Others?

A. Republican.

Q. Others?

A. Copper Pan.

Q. What was the last?

A. In Spanish it is called Copper Pan.

Q. Well, any others?

A. I think there are two more, but I don't know the names.

Q. Did Daley work any other mines except those that he worked with your money?

Objected to as leading.

By the COURT: Yes; avoid leading questions.

Q. Do you know the year in which you married Daley—do you know what year this is?

Objected to as immaterial. Objection sustained.

Q. Do you know the year in which you married Daley?

A. I don't remember.

Q. Who did the work on these mines?

Objected to because it assumes there was work done. Objection overruled.

A. I paid for the work, and Mr. Daley was just managing.

The answer is objected to as a legal conclusion.

Q. Who were the persons that did the work?

111 A. Sometimes Americans and sometimes Mexicans.

Q. What money paid them?

Objected to as immaterial.

A. My money.

Q. Were you married before you married James Daley?

A. Yes, sir.

Q. Was your husband alive or dead when you married Daley?

A. He was dead.

Q. Where did he die?

A. In Hermosillo.

A. That was before you were married to Mr. Daley?

A. Yes, sir.

Q. That is all.

Cross-examination.

By Mr. BARNES:

Q. You say you don't know what year you married Daley in?

A. No, sir.

Q. Where did you marry him?

A. In Bisbee.

Q. Who was present?

A. I do not recollect who was present.

Q. Was anybody present?

A. Nobody.

Q. Do you say nobody was present at all?

Objected to as immaterial.

By the COURT: The record of the divorce is conclusive as fixing the status of the parties. Proceed.

Q. In what house in Bisbee were you married?

A. In a house that I was renting. Daley had no house.

Q. Did Daley come to your house to be married?

A. Yes, sir.

112 Q. Did he come alone?

A. Yes, sir.

Q. What had Daley been doing before that? What had been his business before this time he came to your house and was married to you?

Objected to as immaterial. Objection overruled. Exception.

A. He was doing nothing.

Q. How long had you known him before you married him?

Objected to as immaterial.

By Mr. BARNES: We propose to show the claims were located before the marriage.

By the COURT: Proceed, then.

Exception by defendant.

A. About three months.

Q. Where was he living those three months?

A. In Bisbee.

Q. And what was he doing?

A. I don't know what he was doing.

Q. Wasn't he prospecting out in the mountains?

A. I don't know.

Q. After you married, did you go to live anywhere else?

A. In a little ranch where I am living now.

Q. Where is that ranch?

A. In Washington.

Q. How far from Bisbee?

A. About a mile.

Q. How long after you married Daley did you go to live at this place?

113 A. About the same time we went there to build up the little ranch; it was vacant.

Q. Which one of the mines you have mentioned was located first?

Objected to as not cross-examination and as immaterial. Objection overruled.

Q. Now, which one of the mines you have mentioned was located first?

A. Washington; where we built the ranch.

Q. Were you there present when the Washington mine was located?

A. Yes, sir.

Q. Was this ranch built on the Washington claim?

A. Yes, sir.

Q. How long had you been married when you located this Washington claim?

A. I don't recall the time.

Q. Two or three months, you say?

A. I don't remember.

Q. Well, you say right away after you were married you moved down to this ranch?

A. Yes, sir; to the land.

Q. And did you make the location when you went down there after you were married, first?

Objected to as putting words in the mouth of the witness which she had not uttered. Objection overruled.

Q. Did you make the location of the Washington claim before you went down to that ranch, or after you went down to that ranch?

A. Before.

Q. How long was it after you were married before you located this Washington claim?

A. I don't recollect the time.

Q. How long after you were married did you move down
114 on that claim?

A. I don't recollect.

Q. How long did you and James Daley live in your house in Bisbee after you were married, altogether?

A. I don't recollect the date.

Q. You are certain you hadn't known him but three months before you married him, are you?

A. Yes, sir.

Q. No more than that?

A. No.

Q. Do you mean by that that you knew him no longer than that?

A. That's all.

Q. Now, can't you tell how many days or weeks you lived with James Daley in your own house in Bisbee after you married him and before you went down to the house on the Washington location?

A. No, sir; I don't recollect.

Q. Did you live with him two weeks there before you went to Washington?

A. I don't recollect.

Q. Did you live with him two months before you went down to Washington?

A. I don't recollect.

Q. Did you live with him two years before you went down there?

A. I don't recollect; I don't know the date.

Q. Did not you swear a few minutes ago that you moved down to the ranch shortly after you were married?

A. Yes, sir; but I don't recollect the time, nor the date.

Q. I am not asking for the time or the date, but I am asking how many days or weeks you lived with James Daley in the house in Bisbee before you moved down to Washington.

115 A. I don't recollect the time, whether a week or two weeks, or more.

Q. Give your best recollection.

A. I can't say, because I don't know.

Q. Can't you tell whether you lived there a year or not with James Daley in Bisbee before you went down to Washington?

A. I can't say, because I don't know.

Q. Why did you say that shortly after you were married you moved down to Washington?

A. I did say so, but I don't recollect the time or the date.

Q. I do not ask you for the date. I ask you how long after you were married you lived in Bisbee before you went to Washington.

A. I don't recollect anything.

Q. It wasn't very long anyway, was it?

A. I don't recollect whether a long or a short time.

Q. What was the next mine located after the Washington?

Objected to as going too far on cross-examination.

By the COURT: They have a right to test her knowledge or her memory to the fullest extent.

A. The Irish Mag.

Q. You are sure that was located after the Washington was located?

A. Yes, sir.

Q. Who was present when the Irish Mag was located?

A. I don't recollect the name, but it was Charlie.

116 Q. Charlie Altschul?

A. He is not here now.

Q. Was he working there with your husband?

A. No; was a sort of friend, that is all.

Q. Wasn't he located in the Irish Mag with Daley?

A. He was just a friend of Daley's, but I don't think he was in the location.

Q. Were you there when the monuments were put up on the Irish Mag?

A. Yes, sir.

Q. You were his wife at that time?

A. Yes, sir.

Q. Where were you and Daley lodging and eating your meals at that time?

A. At the ranch; we had a small house there.

Q. On the Washington claim?

A. —, sir.

Q. You are living there yet?

A. Yes, sir.

Q. You lived in that house on that claim all the time you were married to Daley after you moved down there from Bisbee?

A. Yes, sir.

Q. And where did you get your provisions?

A. From the company.

Q. Whose money paid for them?

A. Mine.

Q. Your money furnished all the provisions for the family during those five years, did it not?

A. Yes, sir—clothes and everything.

Q. Clothes for both of you?

A. Yes, sir.

Q. And all provisions?

A. Yes, sir.

Q. And during that time you and he were living together as husband and wife?

A. Yes, sir.

117 Q. Did you have any servant to cook for you or did you do the cooking yourself?

A. Him and I; no more.

Q. You did your own cooking there yourself?

A. Yes, sir; we did all the work.

Q. And during that time he was at work on the mines there?

A. Till the time would come to do the work.

Q. He didn't do anything? What we call assessment-work, did he do that?

A. All he did was to manage and superintend the people that I had working.

Q. How much work did he do? Did he work those mines all the time?

A. Yes, sir.

Q. Worked them all the time?

A. Yes.

Q. Take out any ore?

A. Yes; he used to take out ore; it was left there with the mines.

Q. Was any shipped off and any money got for the ore?

A. No, sir.

Q. Never sold any ore at all?

A. No, sir.

Q. During all those five years did Daley work anywhere else?

A. No, sir.

Q. Didn't work for wages for anybody?

A. No, sir.

Q. Stayed there and lived off you all that time?

A. Yes, sir.

Q. How much money did you have left when he went away?

A. About \$400.

Q. All you had left when he went away was that?

A. Yes, sir.

118 Recess 12 to 1.30 o'clock.

Q. About how old are you?

A. 35 years; maybe a little more; I don't recollect.

Q. You say you never have conveyed any of these mining claims to anybody?

A. No, sir.

Q. Didn't you make a deed to Mr. Tribolet and give it to Mr. Tribolet for some of these claims?

A. No, sir.

Q. Do you know Mr. Tribolet?

A. I know this, that if Mr. Tribolet would do the work on some of these mines, then I would deed the mines to him.

Q. Did you sign any deed?

A. I signed a paper, but I don't know what kind of a paper it was.

Q. What did you mean by saying, in answer to Mr. Reilly, that you never had conveyed these mining claims to anybody?

A. All I wanted to say was that I didn't deed anything to anybody.

Q. Do you say that now?

A. Yes, sir; I haven't deeded anything.

Q. Did you give a deed to Tribolet?

A. I signed a paper because Mr. Tribolet wanted to do the work on this mine.

Q. Did you give this paper to Mr. Tribolet?

A. He made those papers himself.

Q. Did you sign them?

A. I signed it, but I don't know what kind of a paper it is.

Q. Why? Why do you swear you never conveyed this property if you don't know what what paper was?

119 Objected to because the paper referred to is not produced.

By the COURT: Of course, before there is evidence of conveyance, the conveyance itself must be produced. There is no evidence now that there was any conveyance.

Q. Why do you swear you never conveyed the mining claims, if you don't know what it was you did sign?

A. I have not deeded the mines.

Q. What was your business before you married Daley?

Objected to as immaterial and not cross-examination. Objection sustained.

Q. Before you married Daley were you not a prostitute?

Objected to. Objection sustained. Exception by plaintiff.

Q. How long had you had this \$3,000 when you married Daley?

A. I was left a widow.

Q. How long was it you were a widow?

A. Two years.

Q. Where did you keep this money during that time?

A. In my house.

Q. What kind of money was it?

A. Paper, silver, and gold.

Q. How much of it was gold?

A. I don't know.

Q. How much of it was paper?

A. Altogether it was \$3,000.

Q. How much of this money was paper?

Objected to as immaterial.

120 A. Probably a little over \$2,000 was paper.

Q. How much of it was silver?

A. The rest of the money was in silver.

Q. How much of it was in silver?

A. I don't recollect exactly how much paper there was or how much silver.

Q. How much, to your best recollection, was silver? I don't ask you to state exactly.

Objected to as repetition.

A. I don't recollect.

Q. Was there as much as \$100 in silver?

A. I think there was more.

Q. Was there as much as \$200 in silver?

A. I don't know about that.

Q. What did you have the money in, a box or a sack, or what kind of a thing did you have it in?

A. In a sack, and a part of it I had in a little box.

Q. What kind of a sack was it?

A. Canvas sack.

Q. How long?

A. About so high (illustrating about a foot long, B. W. T.) and so wide (making a small circle of 4 or 5 inches in diameter with the fingers).

Q. You had the silver in that sack?

A. Gold and silver both.

Q. Did you have any paper money in that sack?

A. No, sir.

Q. Where did you keep the money?

A. In a small box.

Q. What kind of a box was that?

A. A wooden box.

121 Q. How large a box?

A. A little larger than a cigar box.

Q. Did it have a lock on it and key?

A. Yes, sir.

Q. Where did you keep this box?

A. In a my trunk.

Q. And where did you keep the gold and i silver?

A. In the trunk also.

Q. Did Daley know you had this money when he married you?

A. No, sir.

Q. You never had told him so?

A. No, sir.

Q. How long after you married him did he find out you had this money?

A. About a year, more or less.

Q. Did he find out you had the money before you moved down to the Washington claim or after?

A. When we moved down to Washington then was the time I told him I had this money so we could do some kind of business with it.

Q. How long had you been down to Washington before you told him you had the money?

Objected to as an assumption. Objection overruled.

Q. How long after you moved down to Washington was it that you told Daley you had this money?

A. When we were in Bisbee he told me he wanted to build a house and that he didn't have any money, and then was the time I told him I had the money.

Q. How long was that after you were married?

A. I think a little over a year.

Q. Did you live in Bisbee a year after you were married, before you moved down to Washington?

A. I think so.

122 Q. Did not you swear this morning that you moved down to Washington very soon after you were married?

A. Yes, sir; a little after.

Q. That was true, wasn't it?

A. I don't think a year is very long.

Q. Did you get any other money while you were living with Daley besides this \$3,000?

A. No, sir.

Q. You say you bought your provisions from the company's store at Bisbee?

A. Yes.

Q. Did you buy the provisions in the store at Bisbee all the time you lived with Daley?

A. From the store and from some of the fruit stands around there—wherever I could get it.

Q. When was the company store at Bisbee started?

A. I don't recollect.

Q. How far is this house you lived in on the Washington claim from Bisbee?

A. I don't know. I think a little less than a mile.

Q. Do you mean to be understood or do you say you put up monuments on all the mines you have named?

A. Mr. Daley and myself.

Q. He helped you, then, did he?

A. We had a tapeline and were measuring.

Q. You would hold one end of the tapeline and he the other?

A. Yes, sir.

Q. And did you help Daley make all these monuments on all those claims you have mentioned?

123 A. Yes, sir.

A. Yes, sir.

Q. How many monuments did you put on the Washington claim?

Objected to as immaterial.

A. I don't recollect.

Q. How many monuments did you help put on the Washington claim?

A. I don't recollect very well, but I think it was four.

Q. How many monuments did you put on the Copper Frying Pan claim?

A. I don't recollect.

Q. How many monuments did you help put on the Old Republican claim?

A. I don't know. I don't recollect.

Q. How much work was done on the Old Republican claim while you lived with Daley?

Objected to as not cross-examination. Objection overruled. Exception by defendant.

A. I don't know how much work was done there. The men we put to work and Daley managed it and paid with my money.

By Mr. BARNES: I move to strike out the latter part of that answer as not responsive.

Motion denied.

Q. How much work was done on the Copper Frying Pan claim while you lived with Daley?

A. I have said that I don't know (interrupted)——

Q. How much work was done on the Old Republican claim while you lived with Daley?

124 A. And paid for with my money?

Q. I did not ask for that, and I ask to have it excluded.

By the COURT: Yes; I think it should be.

Q. How much work was done on the Irish Mag claim while you lived with Daley?

A. I don't know. The work was done every year.

Q. What work was done every year?

A. All I know, ten feet and \$100.

Q. Was that all that was done each year?

A. Yes.

Redirect examination:

Q. Have you got the location notices of these mines now?

A. Yes, sir.

Q. How long have you had them?

A. Ever since they were located.

Q. Where are these official notices now?

A. In my trunk.

Q. In this town or in Bisbee?

A. In Bisbee.

Q. Can you from your house without any help go onto the Irish Mag?

Objected to as immaterial. Objection sustained.

Q. You said this morning in your cross-examination that when you and Daley located the Irish Mag you were living on the George Washington. Is that a mistake?

Objected to. Objection sustained. Exception by defendant.

Q. Do you recollect now where you were living at the time you located the Irish Mag?

125 Objected to as not proper re-examination. Objection overruled.

Q. Do you recollect now where you and Daley lived at the time you located the Irish Mag mine?

Objected to as leading. Objection overruled. Exception by plaintiff.

A. We were living in a house at Bisbee.

Recross-examination:

Q. Where were these location notices when Daley ran away from Bisbee?

Objected to as containing an assumption.

Q. Did not Daley run away from Bisbee on account of killing Lowther?

Objected to as improper. Objection sustained.

Q. Did you hear of Lowther being killed by somebody?

Objected to as immaterial.

By Mr. BARNES: I want to show that he ran away at that time. I also want to show that the deed was made while Daley was a refugee in Colorado.

Objection sustained. Exception by plaintiff.

Q. Where were those location notices when Daley left Bisbee?

A. With me.

Q. How long had they been with you before that?

A. All the time, ever since they were located.

126 Q. Where are they now?

A. In my trunk.

Q. Where is your trunk?

A. In Bisbee.

Q. Why didn't you bring them up with you?

A. I didn't know whether they were needed.

Q. You say you have got all of these location notices now?

A. Yes.

Q. And you have had them ever since the locations were made?

A. Yes, sir.

Q. Never been out of your possession at all since the locations were made?

A. No, sir.

Q. Now, have you talked with anybody since the court adjourned, at noon, about where you were living when the Irish Mag was located?

A. No, sir.

Q. Did you have a talk with Judge Reilly during the intermission while court adjourned today?

A. No, sir.

Q. Did you have a talk with anybody during the time the court adjourned, at noon?

Objected to as immaterial.

A. No, sir.

Q. Did anybody say anything to you about whether the Irish Mag was located before the Washington claim or not, during the noon intermission?

A. No.

Q. Did not you swear before noon today that the Washington claim was located before the Irish Mag was?

127 A. I said that we had located the Washington, but I didn't say anything about the others.

Q. Didn't you swear you located the Washington first, and before the Irish Mag was located?

A. I don't know.

Q. Now, do you say the Irish Mag was located first?

A. There is too many questions; I can't answer to them.

Q. Do you say now that the Irish Mag was located before the Washington?

A. They ask me the same question so many times that I can't answer it.

Q. That is the best answer you can make now, is it?

A. I can't say any more.

Q. Which was located first, the Old Republican or the Copper Frying Pan?

A. I don't know.

Q. Which was located first, the Irish Mag or the Copper Frying Pan claim?

A. I don't recollect.

Q. How far was the Irish Mag from the Washington?

A. I don't know; I can't tell.

Q. What direction was it from the Washington?

A. I don't know.

Q. How far was the Old Republican from the Washington claim?

A. Right opposite: in front.

Q. Adjoining; did they touch each other?

A. The Washington is here (indicating), and the Republican is right in front.

Q. Which was located first, the Washington or Republican?

128 A. I don't know.

Q. How far was the Republican from the Irish Mag?

A. I can't say.

Q. How far was the Copper Frying Pan from the Republican?

A. I don't know.

Q. How far was the Copper Frying Pan from the Irish Mag?

A. I don't know.

Q. Which was located first, the Copper Frying Pan or the Irish Mag?

A. I don't know; I don't recollect.

By Mr. REILLY :

Q. Do you know in what direction Bisbee lies from your house?

A. I don't know—down.

Q. That will do.

ROBERT P. STEVENS, a witness called and sworn on behalf of the defendant, testified as follows :

Direct examination.

By Mr. REILLY :

Q. Where do you reside?

A. Bisbee, Cochise county, Arizona.

Q. How long have you resided there?

A. About 11 years.

Q. Did you know James Daley there?

A. I did.

Q. Did you know the defendant Angela Diaz?

A. Yes, sir.

Q. Did you know her before she married Daley?

A. Yes, sir.

Q. Can you tell how long it is since the time of that marriage?

129 A. Well, I can't tell for sure, but it certainly is as much as seven years. I am inclined to think it is a little longer, but I am not sure of that fact; it was none of my business, particularly, and I didn't take much notice.

Q. Did Daley have any money, to your knowledge, at that time or did he earn any afterwards?

Objected to as immaterial and leading.

By the COURT: Yes; it does not appear that he knows.

Q. Did you know Daley well?

A. Yes, sir; I knew him well.

Q. Did you know whether he had money or not?

Objected to as immaterial. Objection overruled. Exception by plaintiff.

Q. Did he have any money?

A. Not to my knowledge.

Q. Do you know if Angela Diaz had money at that —?

A. I could not swear positive if she did, but I think she did.

By Mr. BARNES: We object to what this witness thinks about it, and we object to the last question and answer.

By the COURT: Yes; I think that is incompetent.

Q. Did you see anything with Mrs. Daley to satisfy you that she had money?

Objected to as improper. Objection sustained.

Q. What makes you think that she had money?

Objected to as not calling for a fact.

By the COURT: If he knows any facts he may state them.

130 Q. State what facts you know that led you to believe she had money.

A. Well, I hardly know how to get at it; one thing, I saw a good-size canvas sack marked "\$1,000."

Objected to.

Q. That is all.

Cross-examination.

By Mr. BARNES:

Q. Do you know what was in the sack?

A. I do not. There was nothing in it when I seen it.

Q. Were you present when Daley was married to this woman?

A. No, sir; I was present the evening before when they had a talk.

Q. Did you testify yesterday that you were present when they were married?

A. No, sir.

Q. Then you were not present when they were married?

A. I was not.

Q. How do you fix the time?

A. Well, I did it from other circumstances.

Q. Well, not, just tell us how you figure out the time to be 7 years and not eight years or six years.

A. Well, I couldn't do that positively; the other things I remember in my business and one way and another.

Q. Now, might not it be that they have been married eight years?

A. I don't think so.

Q. Mightn't it be that they have been married only six years?

131 A. They have been married over six years.

Q. You are sure of that?

A. Yes, sir.

Q. Do you remember what time in the year they were married?

A. No; not for sure.

Q. Can't tell what month?

A. Cannot.

Q. Can't tell whether spring, summer, fall, or winter?

A. Well, sir, I am not sure of it, but it appears to me it was in the fall of the year.

Q. How do you know that they were married at all?

A. Well, I know they lived together.

Q. Oh, is not that all you know about it?

A. That's all.

Q. Where were they living? Where did they first go to live together?

A. In what is called "Mexican town" in Bisbee.

Q. How long did they live there?

A. Only a very short time.

Q. How long do you mean by that?

A. A week or two or two or three weeks, or something of that kind.

Q. Where did they go then?

A. Down the canyon a short distance.

Q. Do you know where the Washington claim is?

A. Yes, sir.

Q. Did they go to live on that claim?

A. Not then; no.

Q. How far from the Washington claim did they live?

A. Something near half way between Bisbee and Washington.

Q. How long did they live there?

A. That I don't know. Some little time, but no great time.

132 Q. They only lived about a week in Bisbee?

A. It might have been two or three weeks, or might have been even more.

Q. Put your outside limit.

A. It was none of my business, and (interrupted)——

Q. It is your business not to tell your best recollection about it.

A. But any man that has any business at all (interrupted)——

Q. Then if you don't know anything about it, why do you say anything about it?

A. I say it because I was asked.

Q. Tell us what your answer is, then.

A. You asked me how long they lived there, and I told you they lived there some considerable time.

Q. Now put your outside limit. You said about a week.

A. I didn't say a week.

Q. Well, I won't quarrel with you about that. How long did they live there before they moved down the canyon?

A. I could not say.

Q. A year?

A. No, sir.

Q. A month?

A. Yes, sir.

Q. Two months?

A. I couldn't say.

Q. Three months?

A. I couldn't say.

Q. Could you say four months?

A. No; they only lived there a short time.

Q. How long do you mean by saying "a short time"?

133 A. In some instances I might mean six months.

Q. I mean in this instance. How long do you mean by "a short time"?

A. I couldn't remember to tell you sure about it.

Q. Do you know anything about it?

A. I do; I know they only lived there a short time.

Q. How long is that?

A. I would not say; I ain't going to tell you a thing I don't know.

Q. What idea do you wish to convey by "a short time"?

A. It might have been from one week to two months.

Q. Two months the outside?

A. I think so.

Redirect examination:

Q. How long did they live together from that time?

A. About five years.

Q. Up to the time he went away?

A. Yes, sir.

Q. Did they treat each other as husband and wife during that time?

A. Yes, sir.

Recross examination:

Q. When did he go away?

A. I think, to the best of my recollection, it was two years last April.

Q. Do you remember what time in April?

A. It was on the 11th day of April, if I remember right.

Q. How long before Daley went away was Lowther killed?

Objected to as immaterial and not cross-examination.

A. That is only hearsay; I didn't see Daley go away, but
134 I never saw him after that day, and I don't think I saw him on that day,

Q. How long was it after the death of Lowther that you missed Daley?

A. I missed him immediately after, and I never saw him after.

Q. Never saw him since?

A. No.

Q. That is all.

Defendant rests.

FRANK BROAD, a witness called and sworn by the plaintiff in rebuttal, testified as follows:

Direct examination:

By Mr. BARNES:

Q. Mr. Broad, do you know this man A. J. Mehan?

A. Yes, sir.

Q. Where did you know him?

A. I knew him in Tombstone?

Q. How long did you know him in Tombstone?

A. About 11 years, or 12 years, maybe.

Q. Do you know what his general reputation is in this community or in the community where he lived for truth and veracity?

By the COURT: Answer yes or no.

Q. Do you know what his general reputation is?

A. Yes, sir; I do.

Q. Is it good or bad?

A. Well, it is pretty bad, I think.

Q. Did you have any conversation with him?

A. I did, sir.

Q. Here in Tombstone?

135 A. Well, a number of us had a conversation together; not me alone.

Q. Wait a minute till I fix the time. After the second day of September, 1890, did you see him here in Tombstone?

A. I did, sir.

Q. More than once?

A. I met him two or three times.

Q. Did you have any conversation with him while he was here?

A. I did.

Q. Did you have any conversation with him about who owned the Daley mines?

A. Well, I heard a conversation that there was some money to be paid a party on the strength of owning the mines.

Q. What did he say about owning them?

Objected to as immaterial.

By the COURT: Is this sought to be introduced as an admission or a contradiction?

By Mr. BARNES: As a contradiction of this deposition by his declaration.

By the COURT: It cannot be introduced as an admission to bind this defendant. It can go to his credit and veracity as a witness. The only question is whether a foundation such as would be necessary if the witness was upon the stand has been laid. (After argument:) I will sustain the objection.

Exception by plaintiff.

Q. I will ask you if, in a conversation with Mr. Mehan since the making of that deed here in Tombstone, he did not say to
136 you that he owned this property and was going to get capital and work these mines?

Objected to as before. Objection sustained. Exception by plaintiff.

By Mr. BARNES: I have other witnesses to the same effect, but under the ruling of the court I will not call them. That is all.

Cross-examination.

By Mr. REILLY:

Q. I understand you to say that Mr. Mehan's reputation for truth and veracity is pretty bad?

A. I am not speaking for killing or beating, but for things I know—borrowing saddles and things like that.

Q. Wait a moment. Who in Tombstone did you hear speaking about his general reputation for veracity and truth?

A. Poor old Mr. Carr—he is dead now—spoke about a saddle he borrowed a day to go to Bisbee, and he had to pay the charges and \$100 expenses, I believe, for himself and son going two or three trips.

Q. He didn't bring it back, do you mean?

A. Yes, sir; and he didn't send a letter to that effect, either.

Q. Well, who else?

A. Mr. Harry Dreker spoke a number of times that he wasn't square.

Q. Wasn't it more that he didn't pay his debts that you heard?

A. That is it.

137 Q. Isn't that all you ever heard about Andy Mehan—that he didn't pay his debts?

A. You can hear plenty.

Q. Did you ever hear anything more than that?

A. I heard Mr. Carr say, as I told you before, that he borrowed a saddle and didn't return it, and he sent word to Mr. Mehan to bring it back, and he left it at Bisbee, and I went one trip after it myself and he went one, and he sent his son, too.

Q. Now, wasn't the purport of Harry Dreker's remarks as to whether he didn't pay?

A. He didn't pay.

Q. But what was the purport of Dreker's talk about Mr. Mehan?

A. Harry Dreker could tell it himself probably as well as I could if he was here.

Q. But I want you to tell it.

A. I was present when he borrowed money, I think, or spoke about some money in regards to some of these mines—that he owned the mines in Bisbee.

Q. Is that all?

A. That is all I know about that case.

Q. Who else did you hear talking about him?

A. I could tell you if I could remember the names. I have said all I know about it. In regard to Jim Daley—you will remember Mr. Daley was a friend of mine until (interrupted)——

Q. I did not ask you about that at all. Wasn't all of the conversation you had with people about Andy Mehan to the effect that he borrowed and didn't pay his debts?

A. The conversation we had I believe there was four or
138 five others present, and another time I remember Mr. Carr, our dead constable, spoke about loaning him a saddle and he didn't return it, and he done him a dirty trick, and put him to more expense than three saddles cost him; that was poor old man Carr.

ANGELA DIAZ, defendant, recalled for plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. BARNES:

Q. Were you a witness before the coroner's inquest in relation to Lowther's death, at Bisbee?

A. No, sir.

Q. (Exhibiting a document.) Did you write that name?

A. That is not my handwriting.

Q. Do you swear you did not sign that?

A. That is not my handwriting.

Q. Do you swear you did not write that "Angela Diaz"?

A. I don't know.

Objected to as not cross-examination.

Q. Did not you swear as a witness on that coroner's inquest, in the presence of S. C. Perrin, that you were not the wife of James Daley?

Objected to.

By Mr. BARNES: It is for the purpose of testing her veracity.

139 By the COURT: You cannot contradict her upon an immaterial point.

By Mr. BARNES: I want to show that she swore upon that inquest that she was not James Daley's wife, but that she lived with him five years as housekeeper. It is to impeach the witness.

By the COURT: It cannot be material, except as to the marriage, and the status of the parties was fixed by the divorce.

(Exception by plaintiff.)

J. F. DUNCAN, a witness called and sworn on behalf of the afore-said plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. BARNES:

Q. Do you know A. J. Mehan?

A. Yes, sir.

Q. Where did you know him?

A. I knew him in Tombstone, and in Bisbee also.

Q. How long have you known him?

A. I think it must be about in the neighborhood of 10 or 11 years.

Q. Do you know his general reputation in the communities where he has lived for truth and veracity?

A. I know that from general reputation; yes.

140 Q. Do you know the general reputation of Andrew J. Mehan in the communities where he has lived for truth and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

Q. That's all.

Cross-examination.

By Mr. REILLY:

Q. Where did you know him?

A. In Bisbee and also in Tombstone.

Q. When did you know him in Bisbee?

A. Along about 1882.

Q. How long was he there in 1882?

A. I couldn't altogether say, but I think he was there about six months.

Q. Where did you know him again?

A. I knew him in this town.

Q. How long have you lived in this town with him here?

A. I have not lived in this town with him here. I have been here on business and seen him here and talked to him here.

Q. Then you never lived in the town when he was here?

A. No, sir; only to stop over a night or day.

Q. Did you know him at Bisbee at any other time except 1882?

A. I did not, except as he came in and back.

Q. Who did you ever hear speak of his reputation for truth and veracity?

A. Various ones.

Q. Who?

A. I can't mention names, it is so long past.

Q. Can't mention anybody?

A. No, sir.

Q. That is the impression you formed about him—that his reputation was bad for truth and veracity, in Bisbee, this six
141 months ten years ago now?

A. Yes, sir.

Q. You haven't lived in Bisbee the last 4 or 5 years, have you?

A. I have lived in Bisbee all but two years now.

Q. You haven't lived in Bisbee for two years?

A. No.

Q. You never lived in Bisbee when Andy Mehan was there?

A. What?

Q. I mean you never have lived in Tombstone when Andy Mehan was there?

A. Only when he come here in regard to these mines.

Q. That was two years ago?

A. A year and a half ago.

Q. You never did live in Tombstone when Andy Mehan lived here?

A. Only when he was here then.

Q. When he was here on a visit?

A. I don't know whether he was on a visit or not.

Q. Been away from this camp six or seven years?

A. No; I don't think that long.

Q. Since 1886?

A. That I don't know.

Q. Well, about that length of time?

A. I suppose maybe about that length of time, but I wouldn't be positive.

Q. You never did live in a town in which he lived except here for six months and that was ten years ago in Bisbee?

A. Yes, sir; ten years ago in Bisbee.

By Mr. BARNES:

Q. How general is your acquaintance with people in Tombstone?

A. I am acquainted very generally over the town.

142 Q. And have been for many years?

A. Yes, sir; very.

Further cross-examination.

Q. Is it not a fact that you do not know many people here?

A. No, sir; I know a great many.

Q. When did you first speak about this case to Mr. Cohn?

A. Today.

Q. Did he come to you to see if you would swear Mehan's reputation was bad?

A. No, sir.

Q. What did he say?

A. In regard to other matters.

Q. Did he speak to you about this case today?

A. No, sir; I spoke to him.

Q. Did you tell him you knew Andy Mehan's reputation?

A. No, sir; I did not.

Q. How did he happen to put you on the stand as a witness?

A. I don't know.

Q. Did you speak to Judge Barnes about it?

A. Only out in the vestibule. Mr. Barnes asked me what his reputation was and I told him I considered it bad.

Q. Who did you ever hear say it was bad?

A. Plenty of people.

Q. Who?

A. I don't know; I can't remember just now, it is so long ago.

Q. Ten years ago?

A. No.

Q. How long ago?

A. Maybe 7 or 8 years ago.

Q. That's all.

- 143 S. TRIBOLET, a witness called and sworn on behalf of plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. BARNES:

- Q. Do you know this man A. J. Mehan?
A. Yes, sir.
Q. How long have you known him?
A. Ever since 1880.
Q. Where have you known him?
A. Known him here in Tombstone.
Q. Where have you been living since 1880?
A. Russellville and Bisbee.
Q. And you have known him in those places?
A. Yes, sir.
Q. Do you know what his general reputation has been for truth and veracity where he has lived?
A. Yes, sir.
Q. Has it been good or bad?
A. Bad.

Cross-examination.

By Mr. ENGLISH:

- Q. Who have you ever heard speak about his reputation as bad?
A. Lots of them.

By Mr. BARNES:

- Q. Do you know anything about a deed made by this woman of these mining claims?
A. Yes, sir.

By Mr. REILLY: That is objected to unless the deed is here.

- Q. Do you know anything about such a deed?
A. Yes, sir.
Q. Where is it?
A. I sent it back to Bisbee. My brother has got it.
144 Q. There was such a deed?
A. Yes, sir.
Q. And you had it?
A. Yes, sir.

Cross-examination resumed:

- Q. Your brother Robert procured a deed from this woman here, Mrs. Diaz, conveying these mines to your brother under power of attorney, didn't he?
A. That's what he did.
Q. He procured it under an agreement that he made with her at

the time that he was to put up counsel fees and costs and carry on this litigation; that was the reason of the giving of the deed?

A. Yes, sir.

Q. He did not do that?

A. Well, you know why he didn't.

Q. He didn't do it?

A. No.

Q. The consideration failed?

A. Yes, sir.

Q. And these deeds remained in Mr. Swain's possession and remain in his possession today, as agent of this lady, don't they?

A. I don't think so.

By Mr. BARNES:

Q. Why wasn't the agreement carried out?

Objected to as immaterial.

Further cross-examination:

Q. Who did you hear speak of the reputation of Mr. Mehan being bad for truth and veracity?

A. Different men that did business with him.

145 Q. That was as far as being good or bad was concerned, wasn't it?

A. Yes, sir; and knocking a fellow down if you asked him for it.

Q. That did not prove that he was a liar or perjurer, did it?

A. A man of hard temper, to a great extent; yes, sir.

Q. Why did you answer counsel here and say that you knew his reputation to be bad for truth and veracity? In other words, you knew he would lie?

A. Yes, sir; he would lie.

Q. Did you know his reputation to be such?

A. Yes, sir.

Q. Who did you hear say so?

A. My own experience.

Q. That don't create his general reputation. Who did you hear say so?

A. Mr. Warnekros.

Q. What did he say about him?

A. He said that he was no good.

Q. When did he say so?

A. I couldn't tell the time exactly.

Q. How long ago?

A. Years ago.

Q. Said he was no good?

A. Yes, sir.

Q. Is that all that he said about him?

A. That he was a bad man to have dealings with.

Q. Was that all?

A. Why, he may have spoken other things about the man, but to that effect.

Q. Was that all he said about him—to that effect?

A. Yes, sir.

Q. Who else did you hear speak of him?

A. A man named Harry Dreker that worked for him.

Q. Barkeeper for Martin Costello?

A. Yes, sir.

146 Q. What did he say about him?

A. Said he couldn't get his pay from him for his work that he done for him as barkeeper over in Russellville.

Q. Is that all he said about him?

A. Said he was a "bad egg."

Q. Is that all?

A. Called him some bad names.

Q. Exhibited a great deal of feeling against him, did he?

A. Yes, sir.

Q. Who else did you hear speak of him?

A. I can't remember now. I know some drummers from San Francisco.

Q. That he owed a bill to?

A. Yes, sir.

Q. And they couldn't collect their bill?

A. Yes, sir.

Q. And they called him names because they couldn't collect their bills?

A. Yes, sir.

Q. Is that all they said about him relating to not paying his bills?

A. They may have said more, but I can't remember.

Q. Do you know of any one that you have heard speak of him and his reputation?

A. Well, I couldn't remember anybody else.

Q. You have told all that you remember about it, have you?

A. Well, I said more about my own dealings that I had with the man.

Q. You formed your impression from the man from your own personal dealings with him?

A. Mostly so.

Q. And not from what you heard from other persons?

A. No more than what I have stated.

147 Q. That is all.

ADOLPH COHN, called and sworn in behalf of the plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. BARNES:

Q. You are the plaintiff in this suit?

A. Yes, sir.

Q. Did you know Andy Mehau?

A. I did.

Q. How long have you lived in Tombstone?

A. I have known him, I presume, ten or eleven years here.

Q. Where have you been living during that time?

A. In this town.

Q. Engaged in business?

A. Merchandising.

Q. Keeping a cigar store?

A. Yes, sir.

Q. Is the place where you keep your cigar store a public place?

A. Yes, sir.

Q. Do you know the general reputation of A. J. Mehan in this town for truth and veracity?

A. Yes, sir; I do.

Q. During what time?

A. Ever since he has been here.

Q. Was it good or bad?

A. Bad.

Cross-examination.

By Mr. ENGLISH:

Q. What did you trust him to the extent of three or four hundred dollars for if you knew his reputation was bad?

A. It is a very common occurrence to trust a man — that when you know their reputation to be bad.

148 Q. Do you know his reputation to be bad so far as paying bills is concerned?

A. Not when I first commenced dealing with him; we have dealt off and on ever since he has been in town.

Q. Have you had any dealing with him in three years past?

A. Not since he left here.

Q. How long did he leave here?

A. I can't tell exactly how long he did leave.

Q. Is it not a fact that you have had no business with him since these notes were signed?

A. No relation of debtor and creditor since that time, except interest.

Q. And that was April 11, 1887?

A. I presume.

Q. All your dealings occurred with him before his name was ever connected with the Daley group of mines?

A. Yes, sir.

Q. Andy Mehan has not been in this town (interrupted) —

A. He came here two or three times, I think, since.

Q. For a very short space of time—a week or so?

A. Between here and Bisbee; yes, sir.

Q. What do you know about his reputation where he has lived for five years?

A. I don't know where he has lived for five years.

Q. Is it not a fact that he has lived in Pueblo, Colorado, for the last five years?

A. I don't know.

Q. Do you know anything about his reputation there?

A. No, sir.

Q. Or in El Paso?

A. No, sir.

Q. Or Nogales?

149 A. No, sir.

Q. Or Phoenix?

A. No, sir.

Q. Then what you have testified to is the conclusion you came to while having business and other dealings with him several years ago?

A. Yes, sir.

Q. Who have you heard speak of his reputation for truth and veracity?

A. Generally throughout the town.

Q. Name the men you have heard speak of it.

A. I know, for instance, one case where the man jumped on a drummer named Briant.

Q. Sam.?

A. I don't know—Briant or Brant.

Q. Who does he travel for?

A. Levis Bros. and Co., of San Francisco.

Q. He jumped on him?

A. Yes; got him into a room and jumped on him.

Q. Does that prove that he would tell a lie?

A. That he would do anything he could to avoid (interrupted)—

Q. Did you make up your mind his reputation was bad because he jumped on a drummer?

A. I made up my mind from the general reputation that the man bore throughout the town.

Q. You are the plaintiff in this case?

A. I am.

Q. And have a large interest in the result?

A. Yes, sir.

Q. And know how important the deposition of Andy Mehan is in this case?

A. I do.

150 Q. Who else did you ever hear speak of his truth and veracity besides Brant?

A. Yourself, for instance.

Q. Do you recollect my saying that his reputation was bad for truth and veracity?

A. I could not recall exactly that; I won't be sure of that, but I know it was generally spoken of about town.

Q. Do you recollect of any particular man saying his reputation was bad for truth and veracity?

A. It was discussed generally about town.

Q. Did not you make an affidavit in this case that he was a resident of Pueblo, Colorado, within the last year?

A. Well, that I have to leave to my attorneys.

Q. (Exhibiting document.) Is this your signature?

A. It is.

Q. Sworn to before Mr. Staehle as notary public of this county?

A. Yes, sir.

Q. In this you set forth that "A. J. Mehan resides at Pueblo, in the State of Colorado." Did you not swear to that?

A. I did.

Q. Is it true?

A. If I signed it, I presume it was.

Q. Did you sign it?

A. I did.

By Mr. BARNES:

Q. You believed it was true then, did you?

A. I did.

Further cross-examination:

Q. It is true that he did reside there at that time?

151 A. I have no means of knowing it; I did not see him there.

Q. You signed the affidavit?

A. Yes, sir; from information.

Q. Who did you get it from?

A. I believe Judge Reilly mentioned something about that.

Q. Did you make this affidavit on information received from Judge Reilly?

A. I won't say as to that.

Q. Where did you receive your information that he resided in Pueblo, Colorado?

A. From rumor.

Q. You believed that he did?

A. It was asserted here.

Q. How long did he reside there?

A. I don't know.

Q. Do you know what his reputation for truth and veracity in Pueblo, Colorado, is?

A. I do not.

By Mr. BARNES:

Q. Do you know A. J. Mehan's handwriting?

A. I do.

Q. (Exhibiting letter.) Who wrote that letter?

A. A. J. Mehan.

By Mr. BARNES: This is the letter Judge Reilly produced this morning. I propose now to offer it in evidence.

Objected to as immaterial. Objection sustained. Exception by plaintiff.

By Mr. BARNES: I have here another letter, which I offer.

Objected to as immaterial.

By Mr. BARNES: It is to show that he claimed this property without any trust.

By the COURT: Let to go in.

152 (Exception by defendant.)

(At this point a discussion took place in regard thereto, and it was finally conceded by all parties that the pleadings in cases Nos. 1534 and 1535 in this court and all files and records of this court therein are considered as in evidence in this case.)

W. F. BRADLEY, recalled in rebuttal by plaintiff, testified:

Direct examination.

By Mr. BARNES:

Q. (Exhibiting documents.) Where have these been kept?

A. Kept on file of unpaid location notices.

Q. How long have they been there?

A. Since 1889.

Q. Since the date of filing?

A. January 19, 1889; yes.

By Mr. BARNES: These four location notices, one of Copper Crown, one of Diadem, one of Intervenor, and one of the Veteran, we offer them in evidence. They are as follows, viz., P, Q, R, S:

EXH. "P."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim (1,500) fifteen hundred linear feet along the course of this *load*, lead, or vein of mineral-bearing quartz and (300) three hundred feet in width on
153 each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the east end of claim and upon which this notice is posted, thence north three hundred (300) feet to a monument of stones; thence west fifteen hundred (1,500) feet to a monument of stones; thence south three hundred (300) feet to a monument of stones, being the center of west end of claim; thence south three hundred (300) feet to a monument of stones; thence east fifteen hundred feet to a monument of stones; thence north three hundred feet (300) feet to the place of beginning.

This claim is situated in the Warren mining district, about one and one-half miles east of the town of Bisbee, in Mule gulch, and joins the Erie Cattle Co.'s mine on the north side and joins the

Mountain Maid mine on its west end, and shall be known as the Copper Crown mine, located Dec. 24th, 1888.

JAMES DALEY.
CHAS. E. BARTHOLOMEW.
G. S. BRADSHAW.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Copper Crown mining claim location notice, as appears of record now in my office, in Book 11, page 614.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
County Recorder.

RECORDER'S OFFICE,
TOMBSTONE, COCHISE CO., A. T.

Filed and recorded, at request of C. E. Bartholomew, January 19th, A. D. 1889, at 9 a. m., Book 11, Record of Mines, page 614.

W. F. BRADLEY,
County Recorder.

Filed Feb. 10th, 1893.

A. H. EMANUEL, Clerk.

EXH. "Q."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim fifteen (1,500) hundred linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and three (300) hundred feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

155 Commencing at this monument of stones, being the center of the east end of claim and upon which this notice is posted, thence north three hundred feet to a monument of stones; thence west fifteen hundred feet to a monument of stones; thence south three hundred feet to a monument of stones, being the center of the west end of claim; thence south three hundred feet to a monument of stones; thence east fifteen hundred feet to a monument of stones; thence north three hundred feet to the place of beginning.

This claim is situated about one and one-half miles east of the town of Bisbee, in Mule gulch and joins the Erie Cattle Co.'s mine

on its south side, and shall be known as the Diadem mine, located Dec. 24th, 1889.

JAMES DALEY.
CHAS. E. BARTHOLOMEW.
G. S. BRADSHAW.

Witness:
EDWARD KANE.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, hereby certify that the above and foregoing is a full, true, and correct copy of the Diadem mining claim location notice, as appears of record now in my office, in Book 11, page 613.

156 In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 10th day of February, A. D. 1893.

A. WENTWORTH,
County Recorder.

RECORDER'S OFFICE,
TOMBSTONE, COCHISE CO., A. T.

Filed and recorded, at request of C. E. Bartholomew, January 19th, A. D. 1889, at 9 a. m., Book 11, Records of Mines, pages 613.

W. F. BRADLEY,
County Recorder.

Filed Feb. 10th, 1893.

A. H. EMANUEL, Clerk.

EXH. "R."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim fifteen hundred (1,500) linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and three hundred feet in width on each side of the middle of said lead, lode, or vein, situate in Warren mining district, Cochise county, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the west end of claim and upon which this notice is posted,
157 thence three hundred feet to a monument of stones; thence east fifteen hundred feet to a monument of stones; thence south three hundred feet to a monument of stones, being the center of east end of claim; thence south three hundred feet to a monument of stones; thence west fifteen hundred feet to a monument of stones; thence north three hundred feet to the place of beginning.

This claim is situated about one and one-half miles east of the

town of Bisbee, in Mule gulch, and joins the Erie Cattle Co.'s mine on its west end, and shall be known as the Intervenor mine; located December 24th, 1888.

JAMES DALEY.
CHAS. E. BARTHOLOMEW.
G. S. BRADSHAW.

Witness:

EDWARD KANE.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Intervenor mining claim location notice, as appears of record now in my office, Book 11, page 613.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in *in* Tombstone, this 10th day of February, A. D. 1893.

A. WENTWORTH,
County Recorder.

158 RECORDER'S OFFICE, TOMBSTONE, COCHISE CO., A. T.

Filed and recorded, at request of C. E. Bartholomew, January 19th, A. D. 1889, at 9 a. m., Book 11, Record of Mines, pages 613.

W. F. BRADLEY,
County Recorder.

Filed February 10th, 1893.

A. H. EMANUEL, Clerk.

EXH. "S."

Location Notice.

Notice is hereby given that the undersigned, in compliance with the requirements of the mining act of Congress approved May 10th, 1872, we have this day located and claim one thousand linear feet along the course of this lead, lode, or vein of mineral-bearing quartz and three hundred or less feet in width on each side of the middle of said lead, lode, or vein, situate in the Warren mining district, county of Cochise, Arizona, and more particularly described as follows, to wit:

Commencing at this monument of stones, being the center of the west end of claim and upon which this notice is posted, thence south three hundred or less feet to a monument of stones, thence east one thousand or less feet to a monument of stones, thence north three hundred or less feet to a monument of stones, being the center of east end of claim; thence north three hundred or less feet to a monument of stones, thence west one thousand or less feet to
159 a monument of stones, thence south three hundred or less feet to the place of beginning.

This claim is situated about one mile east of the town of Bisbee and joins the Stars and Stripes mine on its west side line and the Angel and Cleveland mine on the north, and shall be known as the Vet-ran mine; located Dec. 24th, 1889.

CHAS. E. BARTHOLOMEW.
R. D. DICKEY.
JOHN LENOARD.

Witness:
JAMES DALEY.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, A. Wentworth, county recorder in and for the county of Cochise, do hereby certify that the above and foregoing is a full, true, and correct copy of the Vet-ran mining claim location notice as appears of record now in my office, in Book 11, page 614.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, in Tombstone, this 11th day of February, A. D. 1893.

[SEAL.]

A. WENTWORTH,
County Recorder.

RECORDER'S OFFICE, TOMBSTONE, COCHISE CO., A. T.

Filed and recorded, at request of C. E. Bartholomew, January 19th, 1889, at 9 a. m., Book 11, Record of Mines, pages 614.

W. F. BRADLEY,
County Recorder.

160 Filed Feb. 10th, 1893.

A. H. EMANUEL, Clerk.

Objected to as immaterial.

By Mr. REILLY: The law provides that these notices be made in duplicate, and, as these are only one copy, they do not, therefore, contradict the witness.

(Admitted.) Exception by defendant.

Plaintiff rests in rebuttal.

JAMES REILLY, recalled in subrebuttal, testified:

Direct examination.

By Mr. ENGLISH:

Q. Have you ever seen the original location notices of the mines known as the Daley group of mines, including those mentioned in the complaint and cross-complaint in this action?

Objected to as an effort to bolster up their own witness. Objection overruled. Exception by pl'tff.

A. I had those in my possession, given to me by Angela Diaz, before I brought the two first actions.

Q. They were in her possession, then?

A. She gave them to me, and I returned them to her.

Q. That is all.

(Cross-examination declined.)

161 Defendant rests in surrebuttal.

Rest all.

Testimony closed.

Argument followed, and the court took the case under advisement.

The foregoing 102 pages and documents herein referred to and to be copied into the transcript of the clerk when directed is submitted to the opposite party, the defendant, by plaintiff as a full statement of facts in the trial of this cause, and is by the plaintiff agreed to as such.

Dec. 16th, 1892.

W. H. BARNES,
Att'y for Plaintiff.

The foregoing statement of facts *were* submitted to me this — day of December, 1892, and is by us agreed to as a statement of facts.

_____,
_____,
Attorneys for Defendant.

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ADOLPH COHN }
vs. } No. 1614.
MEHAN ET AL. }

We agree that the foregoing — pages of typewriting entitled in the above cause contains a transcript of the reporter's notes taken at the trial of said cause, which was filed therein with the clerk of the court November 25th, 1892, but said pages also contain matter not in such transcript when so filed, to wit:

"Clerk will here copy said notice in transcript," and many such commands, commencing on page 3 of transcript, all commanding or directing the clerk to insert in his transcript all the documentary evidence introduced by plaintiff (appellant) at the trial, but none, except in one instance, of the documentary evidence of defendant (appellee), though defendant introduced in evidence many documents, including the deposition of A. J. Mehan, as shown by said transcript, pages 37 to 40, inc., and the alleged "statement of facts" is not such nor even a fair statement of the evidence, and we do not agree thereto.

JAMES REILLY,
Attorney for Angela Diaz.
ALLEN R. ENGLISH, *Of Counsel.*

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Counsel for plaintiff in the above-entitled cause of Cohn vs. Mehan *et al.* having heretofore, to wit, on the 16th day of December, 1892, submitted to me a statement of facts in said cause, and the same having been thereupon submitted to counsel for de-

fendants and being by them disagreed to as correct and being likewise found by me to be incomplete because omitting documentary evidence, said counsel for plaintiff did thereafter, to wit, on the 6th day of March, 1893, submit the foregoing as an amended statement of facts in said cause, and the same was on said sixth day of March, 1893, by me approved and signed.

RICHARD E. SLOAN, *Judge*.

164 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

ADOLPH COHN, Plaintiff and Appellant,

vs.

A. J. MEHAN, DEWITT C. TURNER, BELL H. CHANDLER, F. C. Fisher, and Angela Dias de Daley, Defendants and Appellees. }

Assignment of Errors.

And now comes the appellant and alleges that there is manifest error in the record and proceedings as follows, viz:

1st. The court erred in the admission of irrelevant and incompetent testimony, in that the court admitted in evidence the deposition of A. J. Mehan, which said deposition is in all respects irrelevant to any issue raised in the pleadings; that said testimony should have been excluded because in it is contained statements invalidating his title, and is otherwise irrelevant and incompetent.

2nd. The court erred in refusing to allow testimony tending to contradict statements made in Mehan's deposition. (See Broad's testimony in transcript.)

165 3rd. The court erred in refusing to permit the evidence of the defendant Mrs. Daley, given before the coroner's jury in the inquest held on the body of one Lowther, which testimony tended to show that she was never married to Daley, and on the further ground that the said deposition before the coroner tended to contradict the statements made by the said defendant on the trial of the said cause. (See page 54, Transcript.)

4th. The court erred generally in admitting improper evidence and refusing to admit proper and competent evidence; to which ruling exception was taken at the time.

5th. The judgment should be set aside and a new trial granted; because it is not sustained by the evidence, in that—

(a.) The evidence does not support the judgment, because there is no evidence showing any facts which in law creates a resulting trust in favor of the defendant Mrs. Daley.

(b.) The evidence fails to show that plaintiff had any actual or constructive notice of any equities in the defendant Mrs. Daley at the time of the attachment by plaintiff Cohn or at the time of purchase of the property by him.

(c.) The evidence, on the contrary, shows that plaintiff Cohn was an innocent purchaser for a valuable consideration without notice.

(d.) The evidence shows that any money advanced by Mrs. Daley was a loan, and no trust could result in her favor.

166 (e.) The testimony of Mrs. Daley shows at best that it was community property and not separate estate.

(f.) There is no testimony tracing the money claimed as the separate property of Mrs. Daley to any particular piece of property in controversy in this action.

(g.) The evidence of Mrs. Daley shows that Mr. and Mrs. Daley located the property after marriage, and the act of location made the property community, subject *subject* to the disposal of the husband. (See Transcript, pp. 35, 36.)

(h.) The evidence shows that all money expended by Mrs. Daley was subsequently spent for support of the family and for assessment-work on the mines, no trust resulting. (See Transcript, 37.)

6th. The court erred in admitting in evidence the record in the divorce suit, Daley *vs.* Daley.

7th. The court erred in admitting the record in the case of Daley *vs.* Daley *et al.*, the plaintiff not being bound by it.

8th. The court erred in refusing to permit plaintiff to show that Mr. and Mrs. Daley were not husband and wife at the time of the location of the claims in controversy.

9th. The court — in permitting the *lis pendens* filed by Mrs. Daley after the attachment by Cohn and filed in and to which Cohn was not a party.

10th. The judgment is not supported by the evidence :

(1st.) In that Melhan's testimony was irrelevant ; and

167 (2nd.) If relevant, it was broken down by testimony as to his reputation for truth and veracity and by proof of contradictory statements made elsewhere.

(3rd.) The burden of proof being on defendants to prove a trust in favor of Mrs. Daley, there is no evidence in the record tending to show facts from which any trust could result.

11th. The evidence shows that the plaintiff Cohn was at the time of filing this suit the owner of the property described in the complaint.

12th. The court erred in overruling the motion for new trial.

13th. The court erred in rendering judgment for defendants.

BARNES & MARTIN,

Attorneys for Pl'tff.

Title of Court and Cause.

No. 1614.

Whereas in the above numbered and entitled cause, pending in the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise, at a regular term of said court, to wit, on the 25th day of November, 1892, the said defendant, Angela Dias, recovered judgment against the said plaintiff, Adolph Cohn, for the sum of \$91.50 dollars, with interest thereon from the 25th day of November at seven per cent. per

annum and all costs of suit, from which judgment the said plaintiff, Adolph Cohn, has taken an appeal to our supreme court:

Now, therefore we, Adolph Cohn, as principal, and S. Tribolet and Emil Sydow, as sureties, acknowledge ourselves bound to pay the defendants, Angela Dias, the sum of three hundred dollars, conditioned that the said Adolph Cohn, appellant, shall prosecute his appeal with effect and will pay all costs which have accrued in the court below or which may accrue in the appellate court.

Witness our hands this 9th day of January, 1893.

ADOLPH COHN.

S. TRIBOLET.

EMIL SYDOW.

I have fixed the probable amount of the costs of the suit of both the appellate court and the court below at \$300 dollars, and approve the foregoing bond this 9th day of January, 1893.

A. H. EMANUEL,

Clerk District Court, Cochise Co., A. T.

169 TERRITORY OF ARIZONA, } ss:
County of Cochise,

S. Tribolet and Emil Sydow, the sureties on the foregoing bond, being by me first severally duly sworn, upon oath say that they are householders, residents within said county, and are each worth double the amount for which they have signed, over and above all their just debts and liabilities, exclusive of property exempt from execution of forced sale.

S. TRIBOLET.

EMILS SYDOW.

Subscribed and sworn to before me this 9th day of January, A. D. 1893.

A. H. EMANUEL,

Clerk Dist. Court. [SEAL.]

(Endorsed :) No. 1614. Title court and cause. Bond on appeal. Approved and filed Jan. 9th, 1893. A. H. Emanuel, clerk.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I, A. H. Emanuel, clerk of the district court of the first judicial district of the Territory of Arizona in and for the county of
170 Cochise, to hereby certify the foregoing to be a correct transcript of all the proceedings in the cause entitled A. Cohn, plaintiff, vs. A. J. Mehan *et al.*, defendant, now on file in my said office. I further certify that said transcript was demanded by attorneys for A. Cohn, plaintiff and appellant, on the sixth day of March, 1893, and delivered to the attorneys for said appellant on the 29th day of Sept., 1893.

In witness whereof I have hereunto set my hand and seal of my said office this 29th day of Sept., 1893.

[SEAL.]

A. H. EMANUEL, *Clerk.*

171 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Plaintiff,
vs.
A. J. MEHAN ET AL., Defendants. }

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ANGELA DIAS DE DALEY, Plaintiff,
vs.
JAMES DALEY, ANDREW J. MEHAN, and DEWITT C. TURNER, Defendants. }

Plaintiff above named complains of defendant- above named — alleges:

That plaintiff is a resident of the county of Cochise, Territory of Arizona, and the defendant- Andrew J. Mehan and Dewitt C. Turner are residents of the county of Pueblo, State of Colorado, and the defendant James Daley is a non-resident of the Territory, whose place of residence is unknown to plaintiff.

172 That plaintiff and said James Daley intermarried in the aforesaid county of Cochise on the 5th day of January, 1883, and lived and cohabited together as man and wife from that day until the 11th day of April, 1890; that on the day last aforesaid the said James Daley left plaintiff in the county aforesaid with the intention of abandoning her, and with the intention aforesaid has absented himself from plaintiff for more than six month- next before the filing of this complaint, and plaintiff has commenced an action against said James Daley in the court for a divorce from the bonds of matrimony existing between said defendant, James Daley, and plaintiff and for the recovery of her separate property, as hereinafter described.

That at the time of the intermarriage of plaintiff with said defendant, James Daley, as hereinbefore set out, the said James Daley had no property or means of any kind and plaintiff had three thousand dollars in United States currency and coin in her own right.

That during the time aforesaid, to wit, between the 5th day of January, 1883, and the 11th day of April, 1890, plaintiff and defendant invested all of said sum of three thousand dollars in locating, prospecting, buying, and developing mines and mining claims in Warren mining district, in the aforesaid county of Cochise, and in building a residence and and improving a garden lot on the surface of one of said mining claims of about three acres in extent, and on and prior to the said 11th day of April, 1890, all of plaintiff's said money was invested in said mines and mining claims and the residence and garden aforesaid, and by the expenditure thereof plaintiff and defendant had procured and maintained the title to the following-described mining claims and the home and garden aforesaid, to wit:

The "George Washington" mine, located Jan. 1st, 1887, and recorded in Book 11, Records of Mines, at page 225.

The "Old Republic" mine, located December 15th, 1888, and recorded in Book 9, Records of Mines, pages 84 & 85.

The "Copper Frying Pan" mine, located January 22nd, 1889, and recorded in Book 11, Records of Mines, at page 628.

The "Angel" mine, located January 1st, 1887, and recorded in Book 11, Records of Mines, at page 225.

The undivided ($\frac{1}{2}$) half interest in and to the "Irish Mag" mine, located January 1st, 1886, and recorded in Book 11, Record of Mines, at page 104.

The undivided ($\frac{1}{3}$) one-third interest in and to the "Copper Moun-arch" mine, located July 28th, 1886, and recorded in Book 11, Record of Mines, page 555.

The undivided one-third ($\frac{1}{3}$) interest in and to the "Intervenor" mine, located December 24th, 1888, and recorded in Book 11, Records of Mines, at page 613.

174 The undivided one-third ($\frac{1}{3}$) interest in and to the "Old Canteen" mine, located January 1st, 1889, and recorded in Book 9, Record of Mines, at pages 89 and 90.

The undivided one-third ($\frac{1}{3}$) interest in and to the "Diadem" mine, located January 24th, 1888, and recorded in Book 11, Record of Mines, at page 613.

All of which records of mines herein referred to are in the office of the county recorder of the aforesaid county of Cochise.

Also one residence house, outhouses, and garden containing about three acres of well-cultivated land, planted to fruit trees, and situate on the southerly end of the "George Washington" mine, hereinbefore described.

That during all the times hereinbefore set out plaintiff was and still is ignorant of the language, laws, and customs of the United States of America, and defendant was reasonably well acquainted with the same, and defendant during said coverture took and kept the title to all of said property in his own name without the consent or knowledge of plaintiff.

That on the 2nd day of September, 1890, after said defendant, James Daley, had abandoned plaintiff, the said defendant, intending and contriving to cheat and defraud plaintiff out of her
175 said property, executed a deed of all said property to the defendant Andrew J. Mehan without any consideration therefor, but for the sole purpose of cheating and defrauding plaintiff out of the same and enabling the said Mehan to sell the same for the benefit of said Daley, which deed has been recorded in the office of the county recorder of the aforesaid county of Cochise, in Book 11, Deeds of Mines, at page 226; and thereafter, on the 15th day of September, 1890, the said defendant, Andrew J. Mehan, intending and contriving to aid and further the fraud of the said defendant, Daley, executed a deed of one-half undivided of all said property to the defendant Dewitt C. Turner without any consideration therefor, but for the sole purpose of cheating and defrauding plaintiff out of the said property, which deed has been recorded in the office

of the county recorder of the county of Cochise aforesaid, in Book 11, Deeds of Mines, at page 228.

Wherefore plaintiff prays a judgment and decree of this court against defendants that all of the property hereinbefore described to the amount of three thousand dollars is her separate property, and that she is entitled to one-half of the remainder of said property over three thousand dollars.

2nd. That the deed made by the defendant Daley to the defendant Mehan is fraudulent and void and without consideration, and that the deed of the defendant Mehan to the defendant 176 Turner is without consideration and void as to the interest of plaintiff and as to all of said property except as to the one-half of said property after deducting therefrom the sum of three thousand dollars.

3rd. That said property be sold by order of this court, and that plaintiff receive three thousand dollars of the proceeds thereof and one-half of the remainder of said proceeds, and that the other half of said remainder be paid to defendants or either of them as may appear just.

4th. And for such other and further judgment and decree as may appear equitable and for costs of suit.

JAMES REILLY,
Pl'tff's Att'y.

Endorsed: No. 1535. Title of court and cause. Complaint. Filed Oct. 18, 1890. A. H. Emanuel, clerk.

TERRITORY OF ARIZONA, } ss:
County of Cochise,

I hereby certify the annexed and foregoing to be a full, true, and correct copy of the original complaint in the cause entitled Angela Dias de Daley vs. James Daley *et al.*—reg. No., 1535—on file in the clerk's office of the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise.

Witness my hand and the seal of said court this 3rd day of October, A. D. 1893.

[SEAL.]

176½

A. H. EMANUEL, *Clerk*,
By ———, *Deputy Clerk*.

(Endorsed :) No. 390. In the supreme court, Territory of Arizona. Adolph Cohn, appellant, vs. A. J. Mehan *et al.*, appellee. Supplement to record. Filed Dec. 25, 1893. T. D. Hammond, clerk.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN
vs.

A. J. MEHAN, ANGELA DIAS, ET AL. }

Now comes the appellee Angela Dias and moves this honorable court for an order striking out from the transcript filed by appellant in this court in the above-entitled cause the following, to wit:

First. Strike out the alleged state- of facts, pages thirty to one hundred and thirty-four, both inclusive, of said transcript, on the ground that said alleged statement of facts was not approved, settled, nor signed by the trial judge, nor filed with the clerk of the trial court within the time allowed by statute.

177 Second. Strike out of the appellant's bill of exceptions, pages twenty-three to twenty-nine of said transcript, on the ground that the same does not contain a statement "with such circumstances" or so much of the evidence as is necessary to explain the same.

Third. Strike out of the appellant's assignment of errors on the ground that the appellant did not file the same with the clerk of the court below before he took the transcript of the record from the office of said clerk.

Fourth. Strike out a paper filed with the transcript in this cause in this court on December 25th, 1893, entitled "Supplement to record," on the ground that the same is not a part of the record by law, nor made a part thereof by statement of facts or bill of exceptions.

JAMES REILLY,
ALLEN R. ENGLISH,
Att'ys for Appellee.

(Endorsed :) No. 390. In the supreme court, Territory of Arizona. Adolph Cohn, appellant, *vs.* A. J. Mehan *et al.* Motion to strike out. Filed January 9, 1894. J. L. B. Alexander, clerk.

178 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant,
vs.
A. J. MEHAN, ANGELA DIAS, ET AL. }

Now comes appellee Angela Dias and moves this honorable court for an order dismissing the appeal in this cause on the grounds :

1st. That there is no transcript on appeal in said cause filed in this court, properly certified as required by law.

2nd. That the bond on appeal is insufficient in this, the sureties thereon are not bound for double the amount of the probable costs of both the appellate court and the court below, as provided by statute, paragraph 859, Revised Statutes.

JAMES REILLY,
Attorney for said Appellee.

ALLEN R. ENGLISH, *Of Counsel.*

(Endorsed :) No. 390. In the supreme court of the Territory of Arizona. No. 390. A. Cohn *vs.* A. J. Mehan *et al.* Motion to dismiss appeal. Filed Jan'y 9, '94. J. L. B. Alexander, clerk.

179 Be it remembered that on the 9th day of January, 1894, the same being one of the judicial days of the January term, 1894, of the supreme court of Arizona, the following proceedings

were had in said court in the above-entitled cause, to wit: It is ordered that appellant have until January 11th, 1894, to answer motion filed this day by appellee to dismiss.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN

vs.

A. J. MEHAN, ANGELINA DIAS, ET AL. }

Now comes Adolph Cohn, appellant, and to the motion filed by Angelina Dias to strike out from the transcript the statement of facts, the bill of exceptions, assignment of errors, and the supplemental paper filed December 25th, 1893, and says:

I.

That if the court will look at the transcript on file it will be found that there is a very voluminous document, unskillfully prepared and carelessly put together, though it has cost appellant twenty cents for every hundred words contained in it, and so is a very expensive document. While it is inartistic, it is yet a complete transcript of the record, and everything can be found in it by diligent search.

As to the statement of facts, the transcript shows that judgment was rendered November 25, 1892, and that motion for a new trial overruled November 26, 1892.

That on the 16th day of December, 1892, appellant submitted a statement of facts which contained all the evidence as written out by the stenographer in the case, and in that report was stated in its proper order every fact or documentary evidence offered in evidence by both plaintiff and defendant. At the time of its preparation these documents were either in the hands of the opposite party or filed with the clerk; hence the party who prepared the statement of facts, when it came to any particular document, described it, by way of illustration, as follows:

"The plaintiff," "the defendant," as the case might be, "here offered in evidence the judgment-roll in the case of *Daly vs. Daly* from the records of the district court of Cochise county; which said judgment-roll is in words and figures following, to wit:" Then came a note in brackets directing the clerk, when the transcript is made up, to at that point insert the said judgment-roll. So with reference to every document.

181 This transcript was submitted to the opposing counsel, and the court will see the stipulation of opposing counsel that this statement of facts was correct, making no objection thereto as being erroneous in any particular, but stated that the documentary evidence referred to was not written out, and hence declined to approve it. The opposing counsel offered no statement of facts, as they had a right to do under the statute, as against this one, and it was then submitted to the judge to be approved and signed by him.

Afterwards all these documents, as appear by the statement of

facts itself, were all copied and attached to the statement of facts, and so, by reference, indicating their place in the case, and a complete and perfect statement of facts was made, and, when so made, was signed by the judge. The said statement of facts was signed by the judge on the 6th day of March, 1893.

The November term of the district court of Cochise county, the court will take knowledge, began on the second Monday in November, according to law, and continued its term until long after the signing of the statement of facts by the court. The terms of court in Cochise county are by law fixed for the second Monday in May and the second Monday in November, and the November court continued and was not finally adjourned until long after the signing of this statement of facts. Sections 843, 844, and 845, 182 Revised Statutes, bear upon the question of the statement of facts:

" 845. (SEC. 195.) After the trial of any cause either party may make out a written statement of the facts given in evidence on the trial and submit the same to the opposite party or his attorney for inspection. If the parties or their attorneys agree upon such statement of facts, they shall sign the same, and it shall then be submitted to the judge, who shall, if he find it correct, approve and sign it and the same shall be filed with the clerk during the term."

" 844. (SEC. 196.) If the parties do not agree upon such statement of facts, or if the judge do not approve or sign it, the parties may submit their respective statements to the judge, who shall from his own knowledge with the aid of such statements, during the term, make out and sign and file with the clerk a correct statement of facts proven on the trial and such statement shall constitute a part of the record."

" 845. (SEC. 197.) The court may by an order enter-upon the record during the term, authorize the statement of facts to be made up and signed and filed in vacation, at any time not exceeding thirty days after the adjournment of the term."

This statement of facts was submitted to the judge and the opposite party. The parties did not agree, their difference applying solely to the documentary evidence. The parties did not, as 183 provided in section 844, submit respective statements to rest upon this one. The judge thereupon, upon his own motion and from his own knowledge, with the aid of the statement submitted by the plaintiff, during the term made out, signed, and filed with the clerk a correct statement of the facts, and the same signed this record as a proper and technical statement of facts in this case. It is not urged or contended that it is erroneous in any particular, and it contains all the evidence in the case. Hence there is no good ground for striking out this statement of facts contained in this transcript.

As for striking out the bill of exceptions, the exceptions taken upon the rulings of evidence designated and fully contained in the statement of facts is one of the proper ways of bringing the exceptions into the record.

As to the assignment of errors, an inspection will show that the

clerk has failed to note the date of its filing, but the transcript does show that it is included in the transcript and has been placed in the transcript prior to the certificate of the clerk, and hence preceded the certificate of the clerk. The certificate of the clerk was made on the 29th day of September, 1893, and that certificate says on that day the transcript was delivered to the counsel for appellant, and at

the time of that certificate and delivery the transcript was
184 completed, and hence the assignment of errors was in the transcript before delivery. Hence it must have been filed in the district court before delivery. Upon that point the statute says that the law only requires that the assignment of errors shall be filed with the clerk before the party takes the transcript of the record from the clerk's office, and that a copy of such assignment shall be attached to and form a part of the record (section 940, Revised Statutes).

This assignment of error was attached to and formed a part of the record at the time it was delivered to the party; hence the statute is strictly and technically complied with.

As to the motion to strike out the paper filed with the transcript December 25, 1893, that paper is a certified copy of the amended complaint in the cause, which does not appear in the transcript—by some mistake was not included in it—and is certified to and filed here rather than to suggest a diminution of the record and have it certified to afterwards. Parties have the right to certify and file with the case any document which by mistake may be omitted in order to make a complete transcript.

This transcript complies with the statutes in every particular. Although the court will find some difficulty, owing to the faulty make-up on the same, in finding in it all the essential facts, yet they are there and will be found if diligently sought for.

185 Very respectfully submitted.

W. H. BARNES,

Attorney for Appellant.

(Endorsed:) No. 390. Cohn vs. Mehan. Reply to motion to strike out. Filed January 11, '94. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN

vs.

A. J. MEHAN, ANGELINA DIAS, ET AL. }

As to the motion to dismiss appeal, comes the appellant and says that as to the first ground, that there is no transcript on file properly certified, says that the court will find, upon inspection, that the transcript complies with the law and is properly certified.

The appellee in his motion does not point out any defects in the transcript; simply says that there is no transcript properly
186 certified to. I insist the court should consider no such general ground, but should only consider such a motion where the particular defeat is pointed out.

As to the bond on appeal, the court will find upon inspection that the clerk certified that the costs below were \$91.00 taxed against the plaintiff or the appellant here. The bond is for \$300.00.

The court will take judicial knowledge that the appellee's costs in this case in this court can be in no event but a very few dollars. The most of the costs are made by appellant, and of course have been advanced by him, and deposit made to cover appellant's costs. The only cost of appellee can be cost of filing motions and the cost of filing brief and argument. A bond of \$300.00 was filed below and approved by the clerk. It is true that the clerk does certify that the amount of probable costs will be \$300.00. His approval of this bond indicates that he intended \$150.00 to be the amount which would be ample to cover all costs in this court and the court below. If it be held that this bond, as to its amount, does not technically comply with the statute, yet it does clearly cover any possible damages that may be incurred by the appellee, is offered in good faith to comply with the statute, and is sufficient to give this court jurisdiction, and if the court think that this bond is not sufficient in amount, the appellant makes a cross-motion for
187 leave within a reasonable time fixed by the court to file a new bond.

Respectfully submitted.

W. H. BARNES,
Attorney for Appellant.

(Endorsed :) 390. Cohn vs. Mehan. Reply to motion to dismiss. Filed January 11, '94. J. L. B. Alexander.

Be it further remembered that on the 11th day of January, 1894, the same being one of the judicial days of the January term, 1894, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

It is ordered that the appellee have ten days to reply to the brief of the appellant filed in this cause, and the cause be considered as submitted upon filing of said reply.

188 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

ADOLPH COHN, Plaintiff and Appellant,

vs.

A. J. MEHAN ET AL., ANGELA DIAS, Appellee- }

I, A. H. Emanuel, clerk of the above-named court, do hereby certify that the November term of said court for the year 1892 was finally adjourned for said term on December 29th, 1892, as appears to me from the records of said court on file in my office.

This certificate is made at the request of counsel for Angela Dias, for the reason that the matter therein contained does not appear in the transcript certified to by me in the above-entitled cause now in the supreme court.

[SEAL.]

A. H. EMANUEL,
Clerk District Court.

Dated January 16th, 1894.

(Endorsed :) 390. No. 1614. In the district court of the first judicial district, county of Cochise. Adolph Cohn vs. A. J. Mehan *et al.* Certificate of clerk. Filed Jan'y 22, '94. J. L. B. Alexander, clerk.

189 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Plaintiff,

vs.

A. J. MEHAN ET AL., Defendants. }

William H. Barnes, being first duly sworn, on oath states:

That the intimation of James Riley, attorney for appellee, in his brief filed, that the assignment of errors was attached to the transcript after the same was certified by the clerk, after the same was delivered from the hands of the clerk to the appellant, is untrue; that on the 29th day of September the transcript was delivered to the affiant in exactly the condition and shape that it now is, with the assignment of errors therein, as it now appears in the transcript. The same has not been changed or altered in the least particular since the moment that it was certified to by the clerk on the 29th day of September, 1893, and delivered to the appellant.

And affiant also states that on the 16th day of December, 1892, which was as soon after the trial as he could, he procured
 190 from B. W. Tichnor, the shorthand reporter, the transcript of the notes of the trial by Tichnor, the shorthand reporter of said trial, who prepared the statement of facts exactly as it now appears in the transcript, without changing a word or altering a line, and submitted the same to the opposing counsel, and handed the same to the court to be signed by him; that at the time he did so he noted in the said statement of facts a memorandum that at that particular place that certain particular documentary evidence was then and there offered in evidence in words and figures following, to wit, with the direction that the clerk of the court immediately proceed to copy the same into the transcript; that the documents were then and there on file with the clerk or in the hands of opposing counsel, and that affiant requested the clerk to proceed at once to copy the documents into the statement of facts such as were in his possession, and to secure from opposing counsel the documents which were not in his hands and insert them in the transcript; that upon page 132 of the transcript appears affiant's memorandum that on that day he submitted the document so prepared to the opposing counsel, and the judge on page 134 certified that the transcript was handed to him on that day; that the delays from then on were not caused by appellant nor by his counsel, but it was due to the fact that the court was considering of the question and the opposing counsel were making no effort nor affording any aid to produce the documents and to enable the clerk to copy the documentary
 191 evidence referred to; that the court, Judge Sloan, was busy trying other cases, and the affiant, acting for the appellant, frequently spoke to the judge upon the subject, asking him to give

it his attention and to execute the same; that the judge frequently expressed his willingness so to do, but owing to the press of other business it was not done, but it was through no fault of the appellant or of his counsel or of affiant; that appellant and affiant did all that they could do, and that the delay was due, not to the fault of the judge, but to the fact that he was engaged in other business and unable to give it the prompt attention, and hence this statement of facts, so far as this appellant is concerned, should be treated as finally signed and disposed of on the 16th day of December, 1892; that that was the date on which he prepared the document as it now appears, without the changing of a word or line, unless it be considered that the insertion of the documents referred to and in the hands of the clerk be regarded as changing the document.

And further he saith not.

WM. H. BARNES.

Subscribed and sworn to before me this 22nd day of January, A. D. 1894.

[SEAL.]

J. L. B. ALEXANDER, *Clerk*.

192 (Endorsed :) 390. Cohn vs. Mehan. Affidavit of Wm. H. Barnes. Filed Jan'y 22, '94. J. L. B. Alexander, clerk.

Be it further remembered that on the 22nd day of January, 1894, the same being one of the judicial days of the January term, 1894, of the supreme court of Arizona, the following proceedings were had in said court in said cause, to wit:

The appellant, by his attorney, Wm. H. Barnes, presented an additional bond on appeal to this court for the approval of the court, which was taken by the court under consideration.

It was then ordered that appellant have five days to reply to appellee's brief filed herein, and that the case be submitted on the brief filed.

Be it further remembered that on the 25th day of January, 1894, the same being one of the judicial days of the January term, 1894, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

193 The sufficiency of the bond on appeal filed in the court below and the supplemental bond filed in this court by the appellant having been heretofore submitted and by the court taken under consideration, and the court having fully considered the same and being fully advised in premises, the court finds that the original bond on appeal is sufficient as to form, but not as to amount; under the supplemental bond is sufficient as to amount, but not as to form; therefore it is ordered that appellant have leave to file a sufficient bond herein and reply brief to appellee brief herein on or before January 29th, 1894, and that this cause stand submitted in brief at the incoming of said bond and brief.

In the Supreme Court of the Territory of Arizona.

A. COHN
vs.
ANGELINA D. DAILEY ET AL. }

Whereas, in the above-entitled case, pending in said court on appeal from the district court of the first judicial district of the Territory of Arizona in and for the county of Cochise, leave was
194 given to the appellant, A. Cohn, to file in said cause a new appeal bond in said cause, in which at the regular term of said district court of Cochise county, on the 25th day of November, 1892, the said defendant, Angelina D. Dailey, recovered a judgment against said plaintiff, A. Cohn, for the sum of ninety-one dollars and fifty cents (\$91.50), with interest thereon from the 25th day of November aforesaid at seven per cent. per annum and all costs of suit, from which said judgment the said plaintiff, Cohn, appealed to the supreme court aforesaid:

Now, therefore, we, A. Cohn, as principal, and David Cohn and L. Tribolet, as sureties, acknowledge ourselves bound to pay the defendant Angelina D. Dailey the sum of six hundred (\$600) dollars, conditioned that the said A. Cohn, appellant, shall prosecute his appeal in said supreme court with effect and will pay all costs which have accrued in the court below or which may accrue in the said supreme court.

A. COHN.
DAVID COHN.
S. TRIBOLET.

Witness our hands this 25th day of January, A. D. 1894.

195 TERRITORY OF ARIZONA, }
County of Maricopa, } ss:

David Cohn and S. Tribolet, the sureties on the foregoing bond, being by me first severally duly sworn, upon oath say that they are householders, residents within said county, and are each worth double the amount for which they have signed over and above all their just debts and liabilities, exclusive of property exempt from execution or forced sale.

DAVID COHN.
S. TRIBOLET.

Subscribed and sworn to before me this 25th day of January, A. D. 1894.

[SEAL.]

B. A. FICKAS,
Notary Public.

(Endorsed:) 390. Additional bond of appellant. Filed Jan'y 25, '94. J. L. B. Alexander, clerk.

196 In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

A. COHN
vs.
A. J. MEHAN and ANGELA DIAZ. }

TERRITORY OF ARIZONA, } ss :
County of Cochise, }

A. H. Emanuel, clerk of the district court in and for the county of Cochise, hereby certifies that — the assignment of errors in the transcript certified by me in the above-entitled case and now on file in the supreme court the date of filing the assignment of errors was, by mistake, omitted, and as a matter of fact the said assignment of errors was filed in said court by me on the 19th day of September, A. D. 1893, as appears by the records of my office, and was attached to and a part of said transcript on the 29th day of September, A. D. 1893, as it now appears, when I certified to the same and delivered it to W. H. Barnes for appellant.

In witness whereof I have hereunto set my hand and affixed
197 the seal of said district court, at Tombstone, Cochise county, Arizona, this 27 day of January, 1894.

[SEAL.]

A. H. EMANUEL, *Clerk.*

(Endorsed :) No. 390. In the supreme court, Arizona Territory. A. Cohn, appellant, vs. A. J. Mehan & Angela Diaz, appellee. Certificate of clerk district court as to time of filing of assignment of error. Filed Jan'y 28, '94. J. L. N. Alexander, clerk.

Be it further remembered that on the 8th day of March, 1894, the same being one of the judicial days of the January term, 1894, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

This cause having been heretofore submitted and by the court taken under consideration, and the court having considered the same and being fully advised in the premises, it is ordered that the judgment of the lower court be, and the same is hereby, affirmed; and it is further ordered, adjudged, and decreed that the appellees herein, A. J. Mehan, Dewitt C. Turner, Bell H. Chandler, F. C.

198 Fisher, and Angela Dias de Daily, do have and recover of Cohn and from the appellant, Adolph Cohn, and his sureties, David Cohn and S. Tribolet, on the appeal bond herein, the sum of \$91.55, their costs in the court below, and the further sum of \$—, their costs in this court.

In the Supreme Court, Arizona Territory.

ADOLPH COHN, Plaintiff & Appel't,
vs.
A. J. MEHAN ET ALS., Defendant and Appellees. }

And now comes the said appellant and moves the court for a rehearing of said cause for the reason that the court should have re-

versed for the reason that there is no evidence whatever of a resulting trust in favor of Mrs. Daley.

II.

There is no competent evidence of an express trust in the record.

III.

Hence the legal title was in Mehan at the time of the levy, and there was no equity in Mrs. Daley she can enforce, and so the property sued for was subject to the judgment of Cohn.

And as the opinion of the court is not yet filed, appellant asks to be permitted to file and amend motion for a rehearing within a reasonable time after the filing of the opinion herein.

Respectfully submitted.

BARNES & MARTIN AND
WM. C. STALEY,

Attorneys for Appellant.

(Endorsed:) No. 390. In the supreme court, Territory of Arizona. Adolph Cohn, plaintiff and appellant, *vs.* A. J. Mehan *et al.*, defendant and appellee. Motion for rehearing. Filed March 15th, 1894. J. L. B. Alexander, clerk. Barnes & Martin, attorneys-at-law, Tucson, A. T.

200 In the Supreme Court of the Territory of Arizona, January Term, 1895.

ADOLPH COHN, Appellant,	}
<i>vs.</i>	
ANGELINA DAILY ET ALS., Appellees.	

And now comes the appellant and represents to the court that as no opinion has been filed in this case by which appellant can know what questions have been passed upon by the court, and as the appellant is desirous of perfecting an appeal to the Supreme Court of the United States in case a rehearing be not granted as asked for, asks the court, in case the rehearing be not granted, to either prepare findings with a view to such appeal or to make such suggestions as to the holding of the court in the case as will enable counsel to prepare the same and present them to the court for consideration with a view to having findings established in the case.

We would suggest that the court determine the following questions: Whether or not there was an express trust created by parole varying the deed from Daily to Mehan in evidence; and, if so, what facts the court finds as leading to that conclusion.

201 2nd. Whether or not a resulting trust exists in favor of Angelina Daily in the mines sued for in this case; and, if so, what facts the court finds as leading to that conclusion.

Very respectfully,

BARNES & MARTIN AND
M. A. SMITH,

Attorneys for Appellant.

(Endorsed:) No. 390. In the supreme court, Arizona Territory. Adolph Cohn, appellant, *vs.* Angelina Daily *et als.*, appellees. Motion for findings. Filed Jan'y 14, '94. J. L. B. Alexander, clerk. Barnes & Martin, attorneys at-law, Tucson, Arizona.

Be it further remembered that on the 16th day of January, 1895, the same being one of the judicial days of the January term, 1895, of the supreme court of Arizona, the following proceedings were had in cause in said court, to wit:

It is ordered that motion of appellant for rehearing in this cause be granted, and case is ordered placed at the foot of the calendar.

202 Be it further remembered that on the 17th day of January, 1895, the same being one of the judicial days of the January term, 1895, of the supreme court of Arizona, the following proceedings were had in said cause at said court, to wit:

It is hereby ordered that all motions on file in this cause be deemed submitted, and that this case be considered in its regular order on the printed calendar of this court.

Be it further remembered that on the 29th day of January, 1895, the same being one of the judicial days of the January term, 1895, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

On motion of James Reilly, for appellees, it is hereby ordered that he have leave to withdraw his brief in this cause to add additional authorities thereto, and appellant have three days after said authorities are added to reply to the same and cause be submitted on briefs.

Be it further remembered that on the 10th day of July, 1895, the same being one of the judicial days of the July term, 1895, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

This cause having been heretofore submitted and by the court taken under consideration, and the court having fully considered the same and being fully advised in the premises, it is ordered that the judgment of the lower court rendered herein be, and the same is hereby, affirmed; and it is further ordered, adjudged, and decreed that appellee Angela Dias herein do have and recover of and from the appellant herein and S. Tribolet and Emil Sydow, the sureties on the appeal bond herein, the sum of ninety-one and $\frac{5}{100}$ dollars, her costs in the lower court, and her costs in this court, taxed at sixteen dollars.

In the Supreme Court of the Territory of Arizona, July Term, 1895.

ADOLPH COHN, Appellant,	}
<i>vs.</i>	
ANGELINA DAILY ET AL., Appellees.	

And now comes the appellant and moves the court, by virtue of the act of April 7, 1874, Sup. to R. S. U. S., pp. 12 and 13 (R. S.

Arizona, p. 33), to make and certify a statement of facts of the case in the nature of a special verdict, and also rulings of the court in admission and rejection of evidence to be transmitted to the
 204 supreme court with the transcript of the decree. As no opinion in this case has been filed, counsel for appellant have not the data, nor does he know what the find-s and rulings of the court are, so that counsel cannot prepare the same, but counsel offers to draft such statements and findings of the court if the court will in any way indicate what the decision and findings are, and submit the same when drafted to the court for adoption.

W. H. BARNES,
Attorney for Appellant.

(Endorsed:) No. 390. Cohn *vs.* Daily. Motion for findings. Filed July 10, 1895. J. L. B. Alexander, clerk.

Be it further remembered that on the last-named date the following further proceedings were had in said cause in said court, to wit:

Mr. W. H. Barnes, for appellant herein, moved the court to make and file findings in this cause; whereupon the court ordered that said motion be denied.

Be it further remembered that on the 15th day of May, 1895, the same being one of the judicial days of the July term, 1895, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

205 And now, on this 15th day of July, A. D. 1895, this day being one of the days of the July adjourned term of said court, and it appearing to the court that the amount in controversy is, *excessive* of costs, over \$5,000, viz., \$20,000, it is held in open court and ordered that the appeal be allowed as prayed for, upon appellant, Adolph Cohn, giving bond on appeal, according to law, in the penal sum of \$1,000, sureties to be approved by the clerk of this court.

In the Supreme Court of the Territory of Arizona, July Term, 1895.

ADOLPH COHN, Appellant,
vs.
 A. J. MEHAN ET AL., Appellees. }

And now comes Adolph Cohn, the appellant, by William H. Barnes, his attorney, considering himself aggrieved by the judgment affirming said cause, and here, in open court, prays the court for an appeal of said cause to the Supreme Court of the United States.

He shows, by the affidavits of William H. Barnes and Andrew P. Payeken, that the amount in controversy in this cause,
 206 exclusive of costs, is over \$5,000, and he therefore asks that the appeal be allowed upon his executing bonds on appeal, conditioned according to law in such sum as the court may fix, the

same to be filed within such time as the court may order, and the same to be approved by the clerk of this court.

And he prays that a transcript of the record upon — said order or judgment of affirmance was made, duly authenticated, may be sent to the Supreme Court of the United States.

Amount in controversy is, *excessive* of costs, over \$5,000, viz., \$20,000.

W. H. BARNES,

Attorney for Adolph Cohn, Appellant.

And now, on the 15th day of July, A. D. 1895, this day being one of the days of the July adjourned term of said court, and it appearing to the court that —, it is held in open court and ordered that the appeal be allowed Adolph Cohn — filing bond on appeal according to law in the penal sum of \$1,000.00; sureties to be approved by the clerk of the district court.

J. D. BETHUME, C. J.

OWEN ROUSE, A. J.

JNO. J. HAWKINS, A. J.

207 In the Supreme Court of the Territory of Arizona, July Term, 1895.

ADOLPH COHEN, Appellant,

vs.

ANGELINA DAILY ET AL., Appellees. }

TERRITORY OF ARIZONA, } ss:
County of Yavapai, }

William H. Barnes, being duly sworn, on oath says that he was the attorney for the appellant in the district court and in this court; that he is well acquainted with the property which is the subject-matter of this suit and the value of the same; that the same consists of real estate, viz., the mining claims in the complaint described, and that the title to the same is involved in this controversy; that the value of the same is over \$20,000.00, and he states that the full amount in controversy in this case, exclusive of costs, is over \$5,000 and is of the value of more than \$20,000.00.

Affiant states that he is not aware that the record in said cause shows the value of said property in controversy, and this affidavit

208 is made for the purpose of showing directly the value of perfecting an appeal of said cause to the Supreme Court of the United States and of showing to said court that the said Supreme Court has jurisdiction of said cause on appeal so far as the value of the property or the amount in controversy is concerned.

WILLIAM H. BARNES.

Subscribed and sworn to before me this 13th day of July, 1895.

J. E. MORRISON,

Notary Public.

In the Supreme Court of the Territory of Arizona, July Term,
1895.

ADOLPH COHN, Appellant,
vs.
ANGELINA DAILY ET AL., Appellees. }

TERRITORY OF ARIZONA, } ss :
County of Yavapai,

Andrew Payeken, being duly sworn, on oath states that he is acquainted with the property involved in this case and described
209 in plaintiff's complaint, and that the value of said property is over \$5,000.00, and is of the value of about \$20,000.00, and that the full amount in controversy in this cause, exclusive of costs, is over \$5,000, and is of the value of about and more than \$20,000.00.

Affiant states that he is not aware that the record in this cause shows the value of said property, and that this affidavit is made for the purpose of showing directly the value thereof to be about \$5,000.00, exclusive of costs, and for the purpose of said Cohn perfecting an appeal of said cause to the Supreme Court of the United States and of showing to said court that the said Supreme Court of the United States has jurisdiction of said cause on appeal so far as the value thereof or amount in controversy is concerned.

ANDREW PAYEKEN.

Subscribed and sworn to before me this 13th day of July, 1895.

J. E. MORRISON,
Notary Public.

(Endorsed :) No. 390. In the supreme court of the Territory of Arizona. Adolph Cohn, appellant, vs. Angelina Daily et al., appellees. Prayer for appeal. Filed July 15th, 1895. J. L. B. Alexander, clerk.

210 In the Supreme Court of the Territory of Arizona, of the July
Adjourned Term.

ADOLPH COHN, Plaintiff and Appellant,
vs.
A. J. MEHAN ET AL., Defendant and Appellees. }

Petition for Rehearing.

Now comes Adolph Cohn, the appellant in said cause, and moves the said supreme court for a rehearing of the case. The petitioner states that James Reilly and Allen R. English, who reside in Tombstone, Cochise county, are the opposing counsel in the cause.

The petitioner states the following grounds upon which he relies in asking for a rehearing: He states that this case must rest upon two propositions, which are as follows: If Angelena Daily can be held to be the owner of the interest of the mine sued for in this

case, she must do so, either, first, by virtue of an express trust in her favor or by virtue of a resulting trust.

The only express trust which can be found anywhere in the evidence in this case must rest in the follow- facts: These mines
 211 were owned by Daily, had been located by him, and stood in his name. Daily, having killed a man at Bisbee, absconded and was a refugee from justice. On his route at Pueblo, Colorado, he met an old acquaintance and friend by the name of Mehan, and he there executed and delivered to Mehan an absolute deed of bargain and sale which transferred the title absolutely to Mehan. There was no trust reserved in the deed of any kind whatever. Afterwards Mehan put the deed on record in Cochise county, when Cohen, a creditor of Mehan, levied an attachment upon Mehan's interest in these mines.

On the trial in this cause, as the record shows, Mehan was permitted to testify, over the objection of Cohn, that before the deed was made Daily said to him, in substance: I propose to deed you my mines at Bisbee. I want you to look after them and take care of them and sell and dispose of the same and take out your expenses and a good commission and turn the balance of the proceeds thereof over to my wife at Bisbee. This is the substance of the testimony upon which Angelena Daily rests her claim to this property by virtue of a an express trust. Here was a trust declared orally. It varied the terms of a deed absolute.

It seems to me that the authorities are overwhelming that oral
 212 proof cannot be heard to engrave an express trust on a conveyance absolute in its terms."

Perry on Trusts, vol. 1, sec. 76, and cases cited.

Rhine vs. Ellen, 36 Cal., 372.

Bowle vs. Curler, 26 Pac. Rep., 226.

The fourth section of the statute of frauds as adopted by Arizona, sec. 2030, R. S., is in these words: "Any contract for the sale of real estate for a longer term than one year shall be in writing." Now, this was a contract of sale from Daily to Mehan, it is so specified in his deed, and the term- upon which he should hold his title to this real estate by virtue of this contract are to be found either in the deed or in the verbal declarations. If they are found in the deed it was in writing and valid and was an absolute conveyance. If found in the oral declaration it was in violation of that statute and is void. While we have not adopted the seventh section of the statute of frauds, and while a trust may possibly be created by parole, certainly a contract for the sale of real estate must be in writing, and an express trust cannot be proved by parole to vary a writing. This latter rule of evidence absolutely excludes the idea of an express trust in this case, hence there was an absolute sale to Mehan and he became the owner of the property. Our recording statutes confirm this view. The deed was put upon record. It was absolute. -Cohn saw the record and levied upon the property

213 conveyed as the property of Mehan. Nothing can be drawn by way of notice of Mrs. Daily's claim from the fact that she

still occupied the dwelling-house on the Washington claim. She and Daily had lived in that house together for several years ostensibly as husband and wife. Such occupancy was notice to the world while Daily was there that Daily claimed to own the property. She remained there thereafter, occupying the house, and hence her occupancy was a continuance of the notice of Daily's claim so far as the same could be drawn from occupation. That notice was destroyed by the absolute deed to Mehan and the recording of the same. Hence we conclude that there is no express trust in this case, no evidence upon which one can be based, and the idea of an express trust must be discarded. To hold otherwise is to put title to real estate in this Territory at the mercy of oral testimony. This would be a most serious disaster. It would shake the credit of the Territory.

II.

The evidence is less clear as tending to show a resulting trust. On this point the evidence is as follows:

Angelena Daily swears that she never was actually married to Daily, but that some five years before Daily absconded she went to live with him as his wife and they moved down to the Washington claim which had before that been located by Daily. The

214 Irish Mag claim was near by and before that time had been located by Daily and another. She says that at that time she had three thousand dollars in cash; that during the five years that she and Daily lived together Daily did not earn or receive a dollar in cash, but spent his time living with her off of her money. She says that her money supplied the provisions and clothing and all their wants; this would be about \$600 per year. The claims that he owned at the time they commenced living together were on record as having been located by him. He afterwards located claims and filed the notice of location of record as having been located by him and in his own name. The evidence does not trace her money into any one of these claims. It is upon this evidence that the court below held that these claims belonged to her by virtue of a resulting trust. The books may be searched in vain for a case where a resulting trust has been declared upon such evidence. It falls short of every principle by which a resulting trust can be founded.

The title to these mining claims is based upon the act of Congress which authorizes a citizen of the United States to acquire the right to work upon the mineral lands of the United States, and to extract ores of precious metals therefrom, and to maintain this right by doing annually a specified amount of work. I do not say that such

a title may not be the subject of a resulting trust. If two
215 men agree that one shall furnish the money and — other shall search for valuable ores, and that when found they shall be the property of one or both, and the prospector should locate such claims in his own name, the courts would, no doubt, hold that he held the title in trust according to the terms upon which the money was advanced.

But such a trust could not be raised by implication from the fact alone that one man furnish the money and supplies to the prospector. That would be a mere debt which could be enforced by proper procedure.

I again bring these matters before the court for consideration in the confident belief that the court, upon review of the evidence in this case, will see clearly that there is no evidence to sustain an express trust, and that the facts do not make a resulting trust. Unless one of these two conclusions are reached, the judgment below cannot be sustained. The court below held that there was no express trust proven, but held the evidence established a resulting trust, and that is the evidence I ask the court to review. The question is not whether this woman "ought to have this property," or not. Her rights in the property must be measured by law. Her admitted meretricious relations with Daily and their delightful five years' lounging off of her money in the house on the Washington
 216 claim will certainly arouse no sympathy in her favor. With the confident belief that the court will find its duty to be to review this evidence and the briefs of counsel and the authorities cited, I submit this motion.

Very respectfully,

Counsel for Cohn, the Appellant.

(Endorsed :) No. 390. Cohn vs. Mehan. Petition for rehearing. Filed July 23, 1895. J. L. B. Alexander. Barnes & Martin, M. A. Smith, for ap'l't.

In the Supreme Court in and for the Territory of Arizona, of the July Adjourned Term, A. D. 1895.

Know all men by these presents that Adolph Cohn, as principal, and William H. Barnes, M. Asher, and M. Wormser, as sureties, are held and firmly bound unto Angelina Daily and A. J. Mehan in the penal sum of one thousand dollars, lawful money of the United States, jointly and severally well and truly to be paid by us, our heirs, administrators, and assigns.

In witness whereof we hereunto set our hands and seal- this 29th day of July, A. D. 1895.

217 The condition of the above obligation is such that whereas, in a certain cause in the supreme court of the Territory of Arizona, wherein Adolph Cohn was plaintiff and Angelina Daily and A. J. Mehan were appellees, a judgment was rendered affirming the judgment of the district court of the Territory of Arizona in and for the county of Cochise and for costs, which said judgment was rendered on the — day of July, A. D. 1895; and whereas the said Adolph Cohn has prayed an appeal from the judgment and decree of the said supreme court of Arizona to the Supreme Court of the United States; and whereas the said court has allowed the appeal upon said Cohn entering into bond, conditioned according to law, in the penal sum of one thousand dollars:

Now, if the said Cohn shall prosecute his said appeal with effect

and shall pay or cause to be paid whatever judgment or decree may be rendered by the said Supreme Court of the United States against him, and shall perform and execute the judgment and decree of the said supreme court of Arizona, if the same shall be affirmed by the Supreme Court of the United States, then this bond shall be void ; otherwise in full force and effect.

WILLIAM H. BARNES. [SEAL.]
M. ASHER. [SEAL.]

ADOLPH COHN. [SEAL.]
M. WORMSER. [SEAL.]

218 TERRITORY OF ARIZONA, } ss :
County of Pima,

William H. Barnes, being first duly sworn, on oath states that he is worth the sum of one thousand dollars, that being the full penalty of said bond over and above all his just debts — liabilities, exclusive of property exempt from execution; that he is a resident householder of the city of Tucson, Arizona.

WILLIAM H. BARNES.

Subscribed and sworn to before me this 29th day of July, A. D. 1895.

JOS. C. PERRY,
Notary Public, Pima Co., A. T.

[Seal of J. C. Perry.]

TERRITORY OF ARIZONA, } ss :
County of Maricopa,

M. Asher and M. Wormser, both resident householders of the city of Phoenix, county of Maricopa, Territory of Arizona, being first duly sworn, each for himself says that he is worth the sum of one thousand dollars, that being the full penalty of said bond over and above all his just debts and liabilities, exclusive of property exempt from execution.

M. ASHER.
M. WORMSER.

219 Subscribed and sworn to before me this 30th day of July, A. D. 1895.

[SEAL.] BRUCE PERLEY,
Notary Public in and for Maricopa Co.

(Endorsed :) Approved this 27th day of February, 1897. Owen T. Rouse, associate justice. Filed Feb'y 27th, 1897. J. L. B. Alexander, clerk. No. 390. In the supreme court, Territory of Arizona. Adolph Cohn, appellant, vs. A. J. Mehan *et al.*, appellee. Appellant's bond on appeal to U. S. Sup. Court. The sureties on the within bond on appeal are hereby approved by me this 31st day of July, A. D. 1895. J. L. B. Alexander, clerk. Lodged with me this 31st day of July, 1895. J. L. B. Alexander, clerk.

Be it further remembered that on the 31st day of July, 1895, the same being one of the judicial days of the July term, 1895, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

220 In this cause the motion of appellant herein for rehearing filed herein having been fully considered by the court and the court being fully advised in the premises, it is ordered that said motion be, and the same is hereby, granted, and that the judgment of the lower court in this cause be, and the same is hereby, reversed and cause remanded for new trial in the court below, and it is ordered, adjudged, and decreed that the appellant herein do have and recover of and from the appellees herein his costs incurred in this cause in the lower court and the sum of forty-eight and $\frac{1}{10}$ dollars, his costs in this court.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Plaintiff and Appellant, }
 vs.
 A. J. MEHAN and ANGELA DIAS & AL. }

Now comes defendant and appellee Angela Dias and moves this hon. court to set aside and annul the order and judgment made and entered in this cause in this court on the 31st day of July, 1895, reversing the former judgment of this court made and entered on the 13th day of July, 1895, on the following grounds, to wit:

1st. That said order and judgment of July 31st was made inadvertently, unadvisedly, and without authority of law—

In this, that after the judgment of this court was made on July 13th, 1895, affirming the judgment of the lower court, counsel for appellant, Adolph Cohn, on the 15th day of July, 1895, in open court, prayed an appeal from said judgment to the Supreme Court of the United States, which was granted by the court, and the appeal bond fixed at \$1,000.00, to be approved by the clerk of this court.

That thereafter, on the 23rd day of July, 1895, the attorneys for said appellant, Adolph Cohn, filed in this court a motion for a rehearing of said cause, and on this motion the order and judgement of July 31st was made and entered, without service of said motion or any notice thereof to said Angela Dias or her attorneys, as required by paragraph 956 of the Revised Statutes of Arizona, and the said order and judgment of July 31st, 1895, was made in less than ten days after said motion was filed, contrary to the provisions of paragraph 958 of the Revised Statutes of Arizona.

222

JAMES REILLY,
 Attorney for Angela Dias.

ALLEN R. ENGLISH, *Of Counsel.*

To William H. Barnes and M. A. Smith, Esqra., attorneys for appellant, Adolph Cohn:

Please take notice that we will bring the foregoing motion to a hearing in the above-named hon. court on Monday, August 5th, at

10 o'clock a. m., in the court-room of said court, at Prescott, Arizona, if the present term of said court shall last so long, and if not, then said motion will be brought to a hearing at the opening hour of the first day of the next adjourned or regular term of said court. Said motion will be made on the records in the case.

JAMES REILLY,
Attorney for Appellee.

ALLEN R. ENGLISH, *Of Counsel.*

(Endorsed :) No. 390. Cohn vs. Mehan *et al.* Motion of appellee to set aside order reversing cause. Service accepted and copy received this Aug. 2, 1895. M. A. Smith, attorney for appellant. Filed Aug. 5, 1895. J. L. B. Alexander, clerk.

223 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Plaintiff and Appellant,

vs.

A. J. MEHAN & AL. and ANGELA DIAS, Appellee. }

Now comes Angela Dias, appellee above named, by her attorneys, James Reilly and A. R. English, and moves the above-named hon. court for a rehearing of the above-entitled cause on the following grounds, to wit:

That the judgment made and entered in the records of the above-named hon. court on the 31st day of July, 1895, reversing the former judgment of the same court, was without jurisdiction and void, in this:

1st. Said judgment of reversal was made on motion of appellant for a rehearing, which was not served, nor any notice thereof given to said Angela Dias or her attorneys or either of them.

2nd. Said judgment of reversal was made in less than ten days after the filing of appellant's motion for a rehearing of the case, and paragraph- 955, 956, and 958 require that service of a motion for rehearing shall be made on the adverse party or his attorney, and that the rehearing shall be had in not less than ten days after the return of service.

224 3rd. The judgment of the above hon. court, made and entered on 13th day of July, 1895, affirmed the judgment of the lower court, and appellant, Adolph Cohn, appealed therefrom to the Supreme Court of the United States and prayed the above hon. court to allow his said appeal, and the court allowed the same and fixed the appeal at \$1,000.00.

The counsel for appellant Cohn are M. A. Smith and William C. Stable, who reside in Tombstone, Cochise county, Arizona, and W. H. Barnes, who resides in Tucson, Pima county, Arizona.

JAMES REILLY,
Att'y for Appellee, Angela Dias.
A. R. ENGLISH, *Of Counsel.*

(Endorsed :) No. 390. In the supreme court of the Territory of Arizona. Adolph Cohn, plaintiff & appellant, vs. A. J. Mehan

& *al.* and Angela Dias, appellee. Motion for rehearing. Filed Aug. 15, 1895. J. L. B. Alexander, clerk.

225 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant, }
vs.
 A. J. MEHAN ET AL., Appellee. }

SIRS: You will take notice that upon the argument of the motion filed and served herein to set aside and annul the order and judgment made and entered in this cause on the 31st day of July, 1895, appellee will present and read the affidavit of J. L. B. Alexander, clerk of the supreme court, which has been duly filed herein, and copy of which is hereto annexed and herewith served upon you.

Dated January 11th, 1896.

JAMES REILLY,

Attorney for Appellee.

ALLEN R. ENGLISH, *Of Counsel.*

To W. H. Barnes, J. H. Martin, M. A. Smith, W. C. Staehle, of counsel for appellant.

226 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant, }
vs.
 A. J. MEHAN ET AL., Appellee. }

TERRITORY OF ARIZONA, } ss:
County of Maricopa,

J. L. B. Alexander, being duly sworn, deposes and says that he is clerk of the supreme court of the Territory of Arizona, and during the times herein referred to was such clerk; that heretofore, to wit, on the 31st day of July, 1895, appellant's "bond on appeal to the U. S. Supreme Court" was filed in the above cause in said supreme court of the Territory of Arizona by deponent as such clerk at the request of appellant; that the sureties upon said bond were, pursuant to an order made by said court in said cause and duly filed therein, duly approved by deponent as to their sufficiency; that said approval was duly endorsed upon said bond by deponent, and said bond on appeal was thereupon filed in said cause early on the morning of said 31st day of July, 1895, and before the coming in of the court on said day, and before the rendering of any
 227 decision by said supreme court of the Territory of Arizona granting a rehearing of said cause, and before any decision or order of said court was made or rendered reversing the judgment of the district court in said cause.

J. L. B. ALEXANDER.

Sworn to and subscribed before me this 13th day of January, 1896.

[SEAL.]

J. E. WALKER,
Clerk District Court.

(Endorsed:) In the supreme court of the Territory of Arizona. Adolph Cohn, appellant, vs. A. J. Mehan, appellee. Notice of presentation and reading affidavit of J. L. B. Alexander, on argument of motion to set aside and annul judgment and affidavit. Filed Jan'y 13, 1896. J. L. B. Alexander, clerk.

228 Be it further remembered that on the 13th day of January, 1896, the same being one of the days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

On motion of Mr. James Reilly, counsel for appellees, it is ordered that Mr. Wm. Herring be entered associate counsel for appellee in case No. 390, and that appellees have leave to file briefs in said cause, and cause is passed temporarily.

Be it further remembered that on the 20th day of January, 1896, the same being one of the days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

In this cause it is ordered that the hearing be set for January 22, 1896, at 10 o'clock a. m., on the motions herein filed.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant, }
vs.
A. J. MEHAN ET ALS., Appellees. }

229 To A. J. Mehan *et als.*, appellees, and to James Reilly and William Herring, attorneys for appellees:

You will please take notice that upon the incoming of court this day, or upon the call of the above-entitled cause, the appellant, by Barnes & Martin and M. A. Smith, his attorneys, will ask leave of court to file the motion attached hereto.

Dated January 22nd, 1896.

BARNES & MARTIN,
M. A. SMITH,
Attorneys for Appellant.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant, }
vs.
A. J. MEHAN ET ALS., Appellees. }

Now comes Adolph Cohn, appellant herein, by Barnes & Martin and M. A. Smith, his attorneys, and moves the court to strike out a certain affidavit made by one J. L. B. Alexander and filed herein

on behalf of appellees on the 13th day of January, 1896, on
 230 the ground that the bond on appeal mentioned in said affidavit is among the files of said cause in this court, and is therefore the best evidence of its recitals and of the endorsements thereon.

BARNES & MARTIN,
 M. A. SMITH,
Attorneys for Appellant.

(Endorsed :) No. 390. In the supreme court, Territory of Arizona. Adolph Cohn, appellee, vs. A. J. Mehan, appellant. Motion to strike out. Service by copy acknowledged this 22nd day of January, 1896. James Reilly, att'y for appellee. Filed January 22nd, 1896. J. L. B. Alexander, clerk.

In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Plaintiff and Appellant,
 vs.

A. J. MEHAN ET AL. and ANGELA DIAS, Defendants and Appellees. }

And now comes the plaintiff, Adolph Cohn, and responds to the motion to set aside the order reversing the case, and
 231 says:

That the said court at this term of the court has no jurisdiction over the records of the last term of the supreme court of this Territory.

It is familiar doctrine that every court has absolute control over its records and its proceedings during the term, and not after the term has adjourned, and during the term has the right to amend, set aside, or annul all orders or decrees made in a case. This is an inherent power which cannot be abridged, taken away, or lost by any act of either party. A party taking steps to perfect an appeal does not take away the power of the court over the case during the term.

In contemplation of law a term of court is one day.

It is hardly necessary to cite authorities for a proposition so familiar. The law and cases cited will be found in vol. 12, Encyc. of Law, page 90, and vol. 25, Encyc. of Law, page 120. I will cite two cases:

Manchester vs. Herrington, 78 N. Y., 194.

Cheniquary vs. People, 78 Ills., 570.

Barrell vs. Tilton, 119 U. S., 637.

Every court *a fortiori*, a court of last resort, has the right and the power, and, more, it is its duty, at any time during the term, if it finds it has made a wrong decision, to make a new and correct one. The records of this case show that it has been
 232 before this court for a long time. It was submitted to the court on briefs and argument. A rehearing was granted and again submitted to the court on briefs and argument. During the last

term of the court the court announced that it had reached the conclusion to affirm the decision. Appellant filed a motion for a rehearing. It was done during the term, and my recollection is the filing of the motion was announced in open court in presence of Mr. Reilly, attorney for appellees. It is possible I am mistaken in this. The court took a recess until July and then convened again in the same term of court. Just what the order made was I do not know, as I have not the records before me. If I recollect the announcement from the bench correctly, it was stated that the court had concluded to grant a rehearing and stated that, as the cause had been submitted to the court, the court had again considered the case and had reached a conclusion to reverse and remand the case for trial. In my view of it the motion for rehearing cuts no figure in this matter at all. As said before, the court had power during the term to set aside the order of affirmance and to order that the cause be reversed. It was the duty of the court to do so if the court came to

the conclusion that that was a proper judgment in the case,
233 and when that term adjourned the court had no longer power over the case, as by the adjournment of the term the case had got beyond the jurisdiction of the court.

The only power otherwise after the term is the power granted by statute secs. 954-958 to consider and pass upon a motion for a rehearing at the next term of the court. The appellees' motion filed on the 15th day of August, 1895, while it purports to be a motion for a rehearing, is not a motion for a rehearing in any sense.

It does not state the grounds on which the party relies; it does not point out to the court any error made in its decision; offers no ground or reason why the cause should not be reversed and remanded, but it simply points out that the motion for rehearing was heard prematurely, and argues that the court had no power then to grant a rehearing; hence this motion ought not to be considered as a motion for a rehearing.

It seeks to attack the power of the court to set aside its order, and we have shown above that the court had the power during the term to set aside the order of affirmance and to make an order of reversal.

Neither the appellee nor his attorney has filed, as we are advised, any affidavit or evidence to show that the motion for rehearing was not served upon the attorney for appellee. Whether the
234 record is silent upon that point I do not know, but I do know that a copy of the motion for a rehearing was mailed to James Reilly, attorney for appellee, long before the order was made in July, and I also know that a copy of it was lying on his table in his office in Tombstone. I admit this is outside the record, but counsel should not be permitted to deny the service of a motion for a rehearing without offering the affidavit of somebody denying that they had notice of the motion. While the statute in secs. 955, 956 point out how a motion for a rehearing may be served, if there be actual service that particular method is not necessary. If the motion is made in open court in presence of counsel of the opposite side, counsel is charged with the knowledge of the procedure in open court. If service be made by mailing a copy and

he receives it, that would be clearly good service. If a copy of the motion be handed to the party or his attorney, that would be clearly good service, and a party who says he has not been served should show it by affidavit.

But without regard to any motion for a rehearing and outside of it all, the case has been submitted during the term by the parties upon their briefs on file. The case was in the hands of the court; the court had complete power over it, did not lose power over it when it made an order affirming the judgment, and any time
235 during the term, with or without a motion for rehearing on file, it had the power to set aside the order and make a different judgment. The statute as to rehearing extends that power over to the next term of the court if its provisions be complied with.

The above is just what the court did in this case; it had the right and power to do it; its jurisdiction was not lost and this particular motion, whatever it may be, should be denied upon the grounds stated.

Respectfully submitted.

WM. H. BARNES,
Attorney for Appellant.

(Endorsed :) 390. In the supreme court, Territory of Arizona. Adolph Cohn vs. A. J. Mehan *et al.* Reply to motions of appellee for rehearing. Filed Jan'y 22, 1896. J. L. B. Alexander, clerk.

Be it further remembered that on the 3rd day of February, 1896, the same being one of the days of the judicial days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

236 In the cause the motion to set aside the judgment of this court was taken up and was argued by Mr. Wm. Herring, for appellees, and by Wm. H. Barnes and M. A. Smith, for appellant, and cause was submitted; whereupon it is ordered that the motion to set aside judgment be denied and motion for rehearing herein be granted and cause be set for hearing on February 7th, 1896, at 2 o'clock p. m.

Be it further remembered that on the 11th day of February, 1896, the same being one of the days of the judicial days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

This cause came on for hearing and was argued by Mr. W. H. Barnes, for appellant, and by Mr. Reilly, for appellees; and ordered that further argument be continued till tomorrow morning, February 12th, 1896.

Be it further remembered that on the 12th day of February, the same being one of the judicial days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

Argument in this cause was resumed by Wm. Herring, for

appellees, and further argument ordered continued in the cause till tomorrow morning.

237 Be it further remembered that on the 13th day of February, 1896, the same being one of the judicial days of the January term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

The argument in this cause was resumed by Mr. Wm. Herring, for appellees, was concluded by Mr. M. A. Smith, for appellant; whereupon it was ordered that appellees have five days to file brief herein and appellant have — days thereafter to reply, and cause be then submitted on such briefs.

Be it further remembered that on the 2nd day of October, 1896, the same being one of the judicial days of the October term, 1896, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

In this cause the motion of appellees herein to set aside the order and judgment of this court, made and entered herein on the 31st day of July, 1895, reversing the judgment of the lower court in this cause, having been argued by counsel for appellant and appellees respectively and duly submitted and by the court taken under consideration, and the court having fully considered the same and being fully advised in the premises, it is ordered that said

238 motion be, and the same is hereby, sustained, and the order granting appellant's motion for rehearing proceeding said judgment of July 31st, 1895, and the said judgment of July 31st, 1895, in this cause be, and the same is hereby, set aside and annulled, and the said motion for rehearing is denied, and the judgment of this court of July 10th, 1895, is hereby reinstated and confirmed in this cause.

And be it further remembered that on the 24th day of February, 1897, the same being one of the judicial days of the January term, 1897, of the supreme court of Arizona, the following proceedings were had in said cause in said court, to wit:

In this cause Mr. Wm. H. Barnes, for appellant, moved the court for an allowance of an appeal to the Supreme Court of the United States, and also that findings be made and filed by the court in this cause; whereupon it is ordered by the court that appellant herein be granted an appeal to the Supreme Court of the United States upon filing a cost bond in the sum of one thousand dollars, as heretofore ordered, and that the motion of appellant for findings be submitted.

239 In the Supreme Court of the Territory of Arizona.

ADOLPH COHN, Appellant,

vs.

A. J. MEHAN ET AL., Appellees. }

And now comes Adolph Cohen, the appellant, by William H. Barnes, his attorney, considering himself aggrieved by the judgment affirming said cause, and here, in open court, prays the court

for an appeal of said cause to the Supreme Court of the United States.

He shows by the affidavit of William H. Barnes and Andrew P. Payeken that the amount in controversy in this cause, exclusive of costs, is over \$5,000, viz., \$20,000, and he therefore asks that the appeal be allowed upon his executing bonds on appeal, conditioned according to law, in such sum as the court may fix, the same to be filed within such time as the court may order and the same to be approved by the clerk of this court, and he prays that a transcript of the record upon said order or judgment of affirmance made and duly authenticated may be sent to the Supreme Court of the United States.

W. H. BARNES,

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Attorney for Adolph Cohn, Appellant.

And now, on this 27 day of February, A. D. 1897, this day being one of the days of the January, 1897, adjourned term of said court, and it appearing to the court that the said application and offer of bond is in due form and proper, it is here, in open court, ordered that the appeal be allowed as prayed for upon appellant, Adolph Cohn, giving bond on appeal, according to law, in the penal sum of \$1,000.00, the sureties to be approved by the clerk of this court.

A. C. BAKER,

Chief Justice.

JNO. J. HAWKINS, A. J.

OWEN T. ROUSE.

(Endorsed:) No. 390. In the supreme court, Territory of Arizona. A. Cohn, appellant, vs. A. J. Mehan, appellees. Notice of appeal and allowance thereof to U. S. Supreme Court. Filed Feb'y 27, 1897. J. L. B. Alexander, clerk.

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In the Supreme Court of the United States.

ADOLPH COHN, Appellant,

vs.

A. J. MEHAN and ANGELA DIAZ DE DALEY, Defendant- and }
Appellees. }

And now comes the appellant, Adolph Cohn, and alleges that there is manifest error in the record and proceedings in said cause in the supreme court of the Territory of Arizona as follows, viz., to wit:

I.

The court erred in affirming the judgment of the district court in said cause.

II.

The court erred in not reversing the case upon the errors assigned to the record and proceedings in the district court in said cause.

III.

The court erred in that it did not reverse the case and direct the court below to render judgment in favor of plaintiff.

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IV.

The court erred in that it did not reverse the case and direct the court below to render motion for a new trial.

V.

The court erred in that it did not reverse the case on the ground that the evidence did not sustain the judgment, and for that reason to set aside the judgment below.

VI.

The court erred in that it did not direct the court below to render the judgment for the plaintiff, as prayed for.

VII.

The court erred in holding that the evidence sustained the resulting trust in favor of Mrs. Daley, appellee.

VIII.

The court erred in holding that under the evidence there was an express trust in her favor proven by parol varying a deed absolute.

IX.

The court erred in not sustaining the various assignments of error to the record of the trial court.

Appellant therefore prays that the judgment of said
243 supreme court be reversed with such direction as the court may determine in the premises.

By W. S. BARNES,
Att'y for Appellant.

(Endorsed :) No. 390. Cohn vs. Daily. Assignment of errors. Filed March 18, 1897. J. L. B. Alexander, clerk.

244 UNITED STATES OF AMERICA, }
Territory of Arizona, } ss:

J. L. B. Alexander, being first duly sworn, on oath says that he is the duly appointed, qualified, and acting clerk of the supreme court of the Territory of Arizona, and that he has been such clerk since the 9th day of January, A. D. 1894; that on the 12th day of April, A. D. 1897, the citation in the case of Adolph Cohn, appellant, against A. J. Mehan, Dewit C. Turner, Bell H. Chandler, C. F. Fisher, and Angela Dias de Daley, appellees, pending in the said supreme court of Arizona and on appeal to the United States Supreme Court, was

lodged in the office of the clerk of said supreme court of Arizona Territory, which citation was issued by Hon. A. C. Baker, chief justice of Arizona Territory, on or about the 9th day of April, A. D. 1897, in due form of law and made returnable within sixty days from date thereof, and that said citation had an acknowledgment of service endorsed thereon by Mr. William Herring, one of the attorneys of record for said appellees in said supreme court of Arizona Territory; thatt hereafter, on the 28th day of May, A. D. 1897, the records of said supreme court of Arizona were moved, from by order of the Attorney General of the United States, from the Fleming block to the county court-house, in the city of Phoenix, Arizona, and

245 that during the moving of the same the said citation was lost or misplaced, which was among the papers and records so moved, and affiant is now unable to find and produce the said citation, and for said reason does not transmit the same with the transcription to the record in said cause to the United States Supreme Court.

J. L. B. ALEXANDER.

Subscribed and sworn to before me this 28th day of June, A. D. 1897.

[Seal United States District Court, Third District, Arizona.]

J. E. WALKER,

*Clerk of the District Court of the Third Judicial
District of the Territory of Arizona.*

246 In the Supreme Court of the United States.

ADOLPH COHN, Appellant, }
vs.
ANGELINA DAILY, Appellee. }

For good cause shown to the undersigned, chief justice of the supreme court of the Territory of Arizona, the judge who signed the citation in this case hereby enlarges the time when the record of said cause be filed and the cause docketed to the 13th day of July, A. D. 1897.

A. C. BAKER,

Chief Justice of the Territory of Arizona.

[Endorsed :] Lodged June 9th, 1897. J. L. B. Alexander, clerk.

Endorsed on cover: Case No. 16,629. Arizona Territory supreme court. Term No., 136. Adolph Cohn, appellant, vs. Angelina Daily and A. J. Mehan. Filed July 14th, 1897.